United States Court of Appeals
for the Second Circuit

APPENDIX

77-7060

United States Court of Appeals

FOR THE SECOND CIRCUIT

HOWARD M. LASKER and IRVING GOLDBERG,

Plaintiffs-Appellants,

UNITED STATES COURT OF APPEALS
FILED
APR 15 197
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

—against—

HARRY G. BURKS, JR., EDWARD B. BURR, THOMAS F. CHALKER, JOHN R. HAIRE, HARVEY C. HOPKINS, S. P. HUTCHISON, DONALD L. KEMMERER, A. S. MIKE MONRONEY, CHARLES F. PHILLIPS, JEPTHA H. WADE, ANCHOR CORPORATION and FUNDAMENTAL INVESTORS, INC.,

Defendants-Appellees.

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ON APPEAL FROM ORDERS AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

(Volume III—pages 789a-1157a)

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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HOWARD M. LASKER, et ano., :

Plaintiffs, :

-against- :

HARRY G. BURKS, JR., et al., :

Defendants. :

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Deposition of BERYL ROBICHAUD taken by the Plaintiffs, pursuant to decision by the Court, held at the offices of Messrs. Seward & Kissel, 63 Wall Street, New York, New York, on March 9, 1976, at 10:00 a.m., before DAVID J. FELDMAN, a Certified Shorthand Reporter and Notary Public within and for the State of New York.

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-o0o-

BERYL ROBICHAUD, residing in Princeton, New Jersey, having been duly sworn by the Notary Public (David J. Feldman, CSR), was examined and testified as follows:

EXAMINATION BY MR. TERSIGNI:

Q Dr. Robichaud, when did you become a director of Fundamental Investors?

A In late 1973.

Q Do you recall the month?

A It was at the stockholders meeting, and I do not recall the month. It was in the fall, perhaps in October, November.

MR. TERSIGNI: Off the record.

(Discussion off the record.)

MR. TERSIGNI: Could we have this two page exhibit marked for identification, please.

(Minutes of the meeting of the Directors Qualification Committee of the Anchor group of mutual funds dated July 25, 1973 marked Plaintiffs' Exhibit 21 for identification, as of this date.)

Q Dr. Robichaud, we have marked as Exhibit 21 for identification the minutes of July 25, 1973 of the Qualifications Committee, and an extract of minutes relating to the board meeting of July 25, 1973.

I call your attention to the resolution on the second page, and I ask you, does that refresh your recollection with respect to what month you were elected a director?

A The annual meeting of the stockholders was held on September 26, 1973. That must ~~recollect~~ refresh my memory that the stockholders meeting was in September.

Q And you were elected at that meeting?

A I was elected at that meeting.

Q Could you describe the circumstances under which you came to be named as a director of Fundamental and the other Anchor funds?

A By circumstances, you mean the sequence of events?

Q Yes. Just generally, how did it come to pass that you were nominated and elected a director?

A As I recall, the sequence of events was this: Mrs. O'Connor called me to tell me that she was serving as a director of the various mutual funds in the Anchor group. She told me that there were some board openings, and that from what she knew of my business experience, she thought that I may be qualified to fill one of the openings, and asked me whether I was interested.

I told her that I would like to think about whether or not I was interested. I asked her a question about what she interpreted the functions of a director to be. And I then told her I would like about a week to think it over to decide whether or not I wanted to explore the possibility further.

I next consulted our corporate library to find out some information about Fundamental Investors, and other of the mutual funds.

After a week, I decided that I was interested in exploring the possibility further. And I called Mrs. O'Connor to tell her that.

As I recall, the next event was the receipt of a letter from Dr. Kemmerer who said he would like to call me about a possible candidacy on the board of Fundamental Investors and the other mutual funds.

We arranged a time at which he visited me at McGraw Hill and we discussed the qualifications and the responsibilities of a director, as he interpreted them, and we discussed my business experience and how it might match the qualifications.

I then -- excuse me. I forgot one event between -- before I met with Mr. Kemmerer, and that is, I did go to Elizabeth, New Jersey after I spoke to Mrs. O'Connor. And I spent several hours touring the operations in the Anchor office in Elizabeth to become acquainted with the services that were performed for the mutual funds. That same day, I had lunch with Mrs. O'Conner and John Haire.

Then the third event was a talk with Dr. Kemmerer, and next I returned to Elizabeth and talked to some other directors.

Q Do you have a copy of the letter that Dr. Kemmerer sent you?

A I do not.

Q Do you mean by that you do not have it with you or you no longer have it?

A I no longer have it in my files.

Q Do you recall what you did with the letter, if anything?

A I would throw it away.

MR. TERSIGNI: I call for production of the Fund's copy of Dr. Kemmerer's letter to Dr. Robichaud. Will it be produced?

MR. SOUTHER: I will consider your request.

Q Do you recall specifically what the letter said, Dr. Robichaud?

A The letter simply attempted to arrange the logistics of a meeting, and I believe it gave several alternatives. We could meet for dinner at a specific place, at a specific day, on a specific day, or if this was not convenient, we could arrange some other meeting. And that is all the letter said.

Then he followed this with a telephone call, then to confirm the meeting.

Q Do you recall when Mrs. O'Connor called you?

A I do not recall the time. It was in the spring. It might have been May, June, sometime around there.

Q Of '73?

A Of '73.

Q April?

A I don't recall the months.

Q Do you recall how long the telephone conversation lasted?

A No, I do not.

Q Were you in your office or at home when you received the call?

A I do not remember.

Q I believe you testified that in this conversation you asked Mrs. O'Connor what her concept of the functions of a director was; is that correct?

A That is correct.

Q What did she say on that subject?

A I do not recollect exactly any detail that Mrs. O'Connor said on that occasion. I collectively, from all my conversations, accumulated a description of the responsibilities of a fund director, but I do not recall directly what Mrs. O'Connor told me.

Q Tell us, then, what understanding did you gather from these conversations with respect to what the functions of a director were?

A From all of the conversations which I had, I gathered that the functions ~~for~~ of a mutual fund director are to select and to contract for an investment adviser; to watch over the progress of the fund's asset values, and its sales and its redemptions. And, third, to insure ~~itself~~ himself or herself of responsible financial control of the fund assets.

Fourth, to make decisions for the fund as necessary, such as action on dividends. That basically describes the functions of the directors as I derived them from the conversations I had.

Q How long had you known Mrs. O'Connor when she called you in 1973 for the first time,on the subject of possibly becoming a director, that is?

A I had first met Mrs. O'Connor in the year 1941.

Q Could you summarize for us generally the nature and extent of your relationship with Mrs. O'Connor from 1941, when you met her, to 1973, when she called you about becoming a director?

A The origin of my acquaintance with Mrs. O'Connor stemmed from the fact that we were both employees, women of the International Business Machines Corporation. We worked in different areas of responsibility and in different geographic areas. I met her there.

I had not seen her thereafter for at least 10 or 15 years before she called me about the Anchor -- the mutual fund directorship of the Anchor group.

Q You had not seen her for 10 or 15 years prior --

A Prior to that telephone call. Mrs. O'Connor and I have an acquaintance which simply stems from the fact we were both employees of International Business

Machines, and we have not maintained a, as you may say, a social relationship.

Q Would I be correct in understanding that as of the time she called you, you had not seen her from sometime between 1958 to 1963?

MR. POLLACK: Object to the form of the question.

A My response is that I did not see Mary O'Connor, to my best knowledge -- may I restate my answer?

Q Yes, go ahead.

A I had not seen Mrs. Mary O'Connor from the year, about 1963, before that telephone conversation, and it might have stemmed back to 1958.

Q Had you had any contact with her of any kind?

A No.

Q During that period, no?

A No.

Q Would you describe for us the nature and extent of your relationship from 1941 to 1958 or 1963, whatever the date was that you last had contact with her prior to the phone call of 1973?

A During that period I would say that I

probably saw Mrs. O'Connor no more than four or five times during that whole period of 20 years. Each occasion was a social event, and the common link were other people.

Q Were you social friends during that period?

A No.

Q You saw each other at social occasions?

A Four or five times.

Q Did you have business contacts?

A No.

Q Did Mrs. O'Connor tell you how she had your phone number in 1973?

A If she called me at McGraw Hill, she knew I worked at McGraw Hill.

Q Do you know how she knew that?

A By reputation. I had gotten some publicity for other of my activities, and I know she was aware of my activities at McGraw Hill.

Q Do you know that because she told you?

A I don't remember her telling me. She was aware, she did tell me, she was aware of some of my outside activities.

Q Did she tell you why it was that she happened to call you?

A Yes, she did. She thought I had the particular qualifications that would match very well the directorship of a mutual fund.

Q Did she say what those --

MR. SOUTHER: Have you finished your answer? If you did, fine.

THE WITNESS: I think so.

MR. SOUTHER: Okay.

Q Did she tell you what those qualifications were?

MR. SOUTHER: I object to this. You have already asked her that question and she told you to the best of her ability the fact that there is a blend of her conversations with people as to what those qualifications were.

MR. TERSIGNI: No, I did not ask her that at all, Mr. Souther.

I think your recollection is mistaken.

Q Did she tell you what those qualifications were?

MR. SOUTHER: Which qualifications, please?

MR. TERSIGNI: Would you read back the last question and answer before we had the colloquy?

MR. SOUTHER: Do you understand the question?

THE WITNESS: I think I do. I don't remember her referring to any.

Q Was the first contact you had with Dr. Kemmerer a letter?

A As I recollect, yes.

Q Who arranged for you to go to Anchor's offices at Elizabeth, New Jersey?

A If you mean how did I get there logistically, I drove up.

Q Did you simply go, or was there an appointment arranged?

A There was an appointment arranged through Mary O'Connor.

Q Would you explain how you came to go to the offices of Anchor, in Elizabeth?

A I explained previously that I called Mrs. O'Connor and told her I would be interested in exploring further the possibility of a mutual fund directorship. As the next step, then, Mrs. O'Connor arranged that I would visit the offices of the investment adviser on a particular day.

Q When you had lunch with Mrs. O'Connor and

Mr. Haire, did you know that Mr. Haire was on the Qualifications Committee?

A No.

Q Did you know there was a Qualifications Committee?

A No.

Q Did you know who Mr. Haire was?

A Yes.

Q Who was he, to your knowledge?

A My understanding was that he was president of the Anchor Corporation, which was the investment adviser to a group of mutual funds.

Q Was your tour of Anchor on this occasion part of your consideration of the possibility of becoming a director?

MR. SOUTHER: Object to the form of the question.

You may answer it.

A No.

Q What was the purpose of touring Anchor and having lunch with Mrs. O'Connor and Mr. Haire?

A The purpose was to become acquainted with the operations, the service operations for a mutual fund, and to talk further about the responsibilities of a mutual fund director.

Q What purpose did you have in looking into those matters?

A My purpose was to decide whether I would be interested if offered the candidacy to election to the board.

Q Was there any discussion on this occasion between you and Mrs. O'Connor or Mr. Haire, or among the three of you, on the subject of the possibility of your being offered a spot on the board?

MR. POLLACK: Object to the form of the question.

THE WITNESS: Would you repeat the question?

MR. TERSIGNI: Would you reread the question, please?

(Pending question read by the reporter.)

A No.

Q Did you have any conversation with Mrs. O'Connor and/or Mr. Haire on this occasion?

A No.

Q You didn't speak to them on any subject?

MR. SOUTHER: I object to that.

Q Did you speak to them about anything?

MR. SOUTHER: She's told you she had lunch with them.

MR. TERSIGNI: She just said she had no conversation with them.

MR. SOUTHER: I think she didn't understand your question. It is kind of obvious.

MR. TERSIGNI: That is why I'm asking the question you just objected to.

A I think I answered that in a previous question when I said what we talked about.

Q Did you ever talk to Mr. Haire about the possibility of your becoming a director?

A I don't think I can answer that question directly.

Q Can you answer it in some other way, other than directly?

A I talked to Mr. Haire and Mrs. O'Connor about the group of mutual funds for which there were board openings.

We discussed, as I said earlier, the responsibilities of mutual fund directors. We did not discuss directly whether I would be interested or whether they would be interested in me becoming a nominee for a directorship at that time.

Q My question is did you ever discuss with Mr. Haire the possibility of your becoming a director? I'm talking about --

A Yes, I discussed this in a subsequent conversation when I returned to talk to a group of directors, and this was, I believe, sometime in late August, after I had talked with Dr. Kemmerer.

Q Did you ever talk to Mr. Hopkins about the possibility of your becoming a director?

A I do not remember whether Mr. Hopkins was one of the people, one of the directors at a larger meeting that I attended in September. I do not recall who was at that meeting.

Q I'm not asking who was or was not at the meeting. My question is do you recall ever discussing with Mr. Hopkins the possibility of your becoming a director?

A No.

Q Did you have a meeting with Dr. Kemmerer after you received his letter?

A Yes, I did.

Q Do you recall when that meeting took place?

A No, I don't.

Q Do you recall where?

A It took place in the McGraw Hill facilities in Heightstown, New Jersey.

Q Who was present?

A Dr. Kemmerer and myself.

Q Did you have a discussion?

A We had a discussion.

Q What did you say and what did he say?

A I cannot recall what I said and what he said.

Q Do you recall the subject matter of the discussion?

A I do. The subject matter was the role of a director in mutual funds and a discussion of my business experience.

Q Do you recall how long the meeting lasted?

A I would say I was with Dr. Kemmerer several hours.

Q Do you recall anything that you said on the subject of the role of the director?

A No, I do not.

Q Do you recall whether you told him you might be interested in becoming a director?

A I did not at that time.

Q When did you first decide that you would be interested in becoming a director, if ever?

A When did I decide I would accept the nomination, was after they asked me if I would stand for election.

Q Prior to being nominated, had you decided whether you would want to be a director?

A As I stated in an earlier question, when I called Mrs. O'Connor back, I had decided I would be interested in exploring the possibility further.

Q My question is, when did you first decide that you wanted to be a director?

A I do not remember.

Q Do you recall whether it was before or after your nomination?

A It had to be before my nomination, because I had to accept the offer to run for a nominee, so obviously it was when I accepted the offer to run for a nominee that I had come to the conclusion that I would like to be a director.

Q What reasons did you have for wanting to be a director?

A Well, first of all, I -- in other experiences have chosen to serve on boards where I felt the nature of the activity of the organization would be interesting to me, is the first reason.

The second reason is that I have chosen to serve on boards where I feel my particular background and capabilities could serve well.

Q Have you completed your answer?

A Yes.

Q Why did you believe that your particular background and capabilities were such that you would be able to serve well as a director of a mutual fund?

A I believe through my business experience, knowledge and inherent capability I could serve well as a mutual fund director.

Q Had you had any experience prior to becoming a director with respect to mutual funds?

A I had one experience. As a result of my undergraduate research work on the Securities and Exchange Commission, I won an internship, five or six weeks in a New York investment advisory house, Axe/Houghton. And the function was to review the operations of the investment adviser with respect to individuals, to institutions and to mutual funds. That was my first exposure to mutual funds.

Q When was that?

A That was back when I graduated, did my undergraduate work.

Q Can you give us a year?

A In the year 1940.

Q And this was research that you did; is that correct?

MR. SOUTHER: That isn't what the lady said.

A That is not what I said.

Q What was the nature of what you did?

MR. SOUTHER: Why don't you read back the question and answer.

(Previous question and answer read by the reporter.)

MR. TERSIGNI: Are you directing her not to answer that question?

MR. SOUTHER: I haven't directed her not to answer, but you started out by saying "you did research work" and I objected to that because the witness testified to what she just said. If you have a question you want to ask her, ask her.

MR. TERSIGNI: I did and you wanted the record read.

MR. SOUTHER: I wanted to hear the prior answer.

MR. TERSIGNI: Read back the question.

(Question read by the reporter.)

A The nature of what I did, I believe I answered in the previous question, and that was to learn the operations of the investment adviser as they related to advising individuals, institutions and mutual funds. It was an internship.

Q Was this a learning process for you?

A It was.

Q How did you learn whatever you learned?

MR. SOUTHER: I object to this. Please move to something relevant.

MR. TERSIGNI: Are you directing her not to answer?

MR. SOUTHER: Yes, I am directing her not to answer that inane question.

Q What was the next experience, if any, that you had with mutual funds prior to becoming a director?

A My next experience was the first money I earned and could put in the equity market, I put in a mutual fund. And in order to select the mutual fund, I did some research.

Q What was the nature of that research?

A On the various mutual funds which were then available for investment, and the objectives of the various funds.

Q What was the next experience, if any, that you had with mutual funds prior to becoming a director?

A The next experience was an indirect experience. I have a deferred compensation arrangement with McGraw Hill Inc., and as a result of a large investment in mutual funds, which is not under my direct choice -- but the fact that I do have a large beneficial interest in this led me in the year 1970 and 1971, when this investment was initiated by the trustee, to investigate various mutual funds, their goals and objectives.

Q Did you have any other contacts or experience with mutual funds prior to your becoming a director?

A I had a contact with the president of a very large investment adviser of mutual funds through another board affiliation.

Q Anything else?

A No.

Q When you became a director, other than

Mrs. O'Connor, were you acquainted with any of the other directors of Fundamental or any of the other Anchor funds?

A Before I was approached by Mrs. O'Connor, I was not acquainted with any other director.

Q Were you interviewed by the Qualifications Committee?

MR. SOUTHER: Object to the form of the question.

A I believe I stated earlier that I did not know that a Qualifications Committee existed.

Q Did you ever learn of the existence of a Qualifications Committee?

A I did not until after I became a director.

Q How did you come to learn of the existence of a Qualifications Committee?

A When I assumed the responsibility of a director, the full organization of the board of directors of the mutual fund was explained to me. And I also assumed responsibility for serving on the Directors Qualifications Committee.

Q Do you know whether a meeting of the Qualifications Committee was held on July 25th to consider your qualifications to be a director?

MR. SOUTHER: What year, please?

MR. TERSIGNI: 1973.

A No, I do not know.

Q Did anyone ever tell you that you had been recommended to the directors as a candidate?

A Did anyone ever tell me -- I don't understand the meaning of the question.

Q Prior to being elected a director, did anyone ever tell you that you had been recommended to the directors as a candidate?

A Recommended to the directors as a candidate -- I have told you my contacts, that Mary O'Connor initiated a call. I can't translate your words into any meaningful question.

Q Did there come -- are you finished?

A Yes.

Q Did there come a time when you were told that you had been nominated for a directorship?

A Yes.

Q Prior to that, did anyone ever tell you you were being recommended for nomination?

A No.

MR. SOUTHER: When you say nominated, do you mean nominated by the board to be put on a slate before the shareholders?

MR. TERSIGNI: Yes.

MR. SOUTHER: Do you mean the actual putting her on the slate?

Could I have an answer?

MR. TERSIGNI: I think she answered the question. Why don't we go on. We are wasting time.

MR. SOUTHER: I think she answered it 10 minutes ago and I'm wondering why you are going back to it.

(continued on next page.)

BY MR. TERSIGNI:

Q Who advised you that you'd be nominated as a director?

MR. SOUTHER: I object to the question unless you make it clear what you mean by nominated.

The witness has testified that she was asked if she would serve -- if her name could be put in nomination to the shareholders.

Now, is that the stage you're inquiring about?

MR. TERSIGNI: Are you directing her not to answer?

MR. SOUTHER: No, I'm asking you please to make the question meaningful.

MR. TERSIGNI: Either let her answer or let me ask the next question.

MR. SOUTHER: Ask your next question.

MR. TERSIGNI: You're directing her not to answer?

MR. SOUTHER: Yes.

If you don't want to ask the question in a meaningful way we are wasting our time here.

Q Did anyone ever tell you you had been

designated as a nominee for election?

A Someone called me, and I don't remember who it was, to say I would be offered the opportunity to run for election of a director of Fundamental and the other mutual funds if I so chose.

Q Do you know whether or not Mrs. O'Connor reported to the board that she had known you for many years and joined in the recommendation of Dr. Kemmerer that you be nominated as a director?

MR. POLLACK: I object to the form of the question.

I also ask that it be reread, please. I find it very hard to understand.

(The pending question was read by the reporter.)

MR. POLLACK: I further object on the grounds that the question is compound and it also misstates what Dr. Robichaud said with respect to her knowledge or acquaintance with Mrs. O'Connor. I think it is a very misleading question.

I respectfully ask the questioner to break it into two questions and to change the form.

MR. TERSIGNI: Can we have an answer or a direction not to answer?

MR. SOUTHER: Go ahead.

Do you know?

A I do not.

Q Let me show you Exhibit 21 for identification and call your attention to the portion I just bracketed in pencil, referring to Mrs. O'Connor.

Is this the first time you learned of that?

A Yes, it is.

Q May I have it back, please.

MR. SOUTHER: May I ask, please, that if you're going to put an exhibit on the table, that you not bracket it or put pencil marks on it, because as time goes on, somebody's going to forget who put the marks on and it's going to cause confusion.

MR. FRIEDMAN: Could I ask what it was that was bracketed?

MR. TERSIGNI: Yes, I'll read it into the record.

"Mrs. O'Connor reported that she had

known Mrs. Robichaud for many years and joined in the recommendation of Mrs. Robichaud."

BY MR. TERSIGNI:

Q Did you know that Dr. Kemmerer recommended you for nomination to the board?

A No.

Q Would you look at the minutes again?

MR. SOUTHER: The minutes you're now showing the witness, there's an excerpt of the action taken at the board meeting of the funds held on July 25, 1973.

A Yes.

Q Is that the first time you learned about that?

A Yes.

Q Do these minutes refresh your recollection in any way as to who called you and informed you that you'd be designated as a nominee?

A No.

Q Was it a phone call in which you were advised?

A I believe it was, yes.

Q What, if anything, did you say?

A I said I accept it.

Q When is the first time that anyone discussed with you your serving on the Qualifications Committee?

A I don't remember the time, but -- I don't remember the time.

Q Was it before or after your election as a director?

A Obviously it had to be after my election as a director.

Q Was it soon after or at the time you were elected?

A I do not remember.

Q And who were the --

A The --

Q Go ahead.

A Except it was not at the time on the very day of the -- well, I was elected at the stockholders meeting, and therefore it could not have been coincidental with the stockholders meeting.

MR. TERSIGNI: I call for production of the minutes relating to Dr. Robichaud's designation as a member of the Qualifications Committee. If you have them in your folder, Mr. Souther, I think that will expedite the --

MR. SOUTHER: I don't know which minutes you're referring to, Mr. Tersigni. Are you asking for documents that we've heretofore produced to you and which you forgot to bring with you today, or something in addition to that?

MR. TERSIGNI: To my knowledge, you have never produced any minutes relating to Dr. Robichaud's designation as a member of the Qualifications Committee, which is what I just asked you for.

Do you have it?

MR. SOUTHERN: I don't have it.

Because you referred to, on the record, to something in my folder, and what I told you earlier, I guess it was off the record, that what's in my folder is simply a copy of what we heretofore produced to you in response to your request.

MR. TERSIGNI: I call for production of those minutes.

BY MR. TERSIGNI:

Q Do you recall someone discussing with

you your serving on the Qualifications Committee?

A I do not recall the event.

Q Do you recall ever telling someone that you would be willing to serve on the Qualifications Committee?

A I do not recall telling someone I would be willing.

Q Do you recall finding out that there was such a thing as the Qualifications Committee?

A I do not recall the time at which I found out.

Q I'm not asking you the time. I'm asking you do you have a recollection in your mind that there came a time when you learned that there was such a thing as the Qualifications Committee.

MR. POLLACK: That's already been asked and answered.

MR. SOUTHER: That's been asked and answered.

MR. TERSIGNI: Would you answer, please?

A No.

MR. SOUTHER: Did you understand the question?

THE WITNESS: Did I recall --

MR. SOUTHER: The question that was asked now is the same as the question asked before, did you ever learn that there was a Qualifications Committee.

And your earlier testimony was after you became a director and you learned all the workings of it, you learned there was a committee and, indeed, you were put on it.

Now, I think he's asking the same question, but I think you're confused.

THE WITNESS: Do you want to repeat the question?

Is there a question pending? What is the question?

MR. SOUTHER: That's the question that was pending.

BY MR. TERSIGNI:

Q Did there come a time when you found out that there was such a thing as a Qualifications Committee?

A Yes.

Q How did you find that out?

A I don't recall.

Q Do you recall becoming a member of that

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committee?

A I don't recall the specific time at which I became a member.

Q I'm not asking you the specific time, Dr. Robichaud. I'm asking you, do you recall that there came a time when you became a member?

A I recall the time at which I served at a meeting of the directors' Qualification Committee.

Q Do you recall anyone discussing with you the concept that directors also serve on committees?

A No. Because that concept was well known to me.

Q How did it become well known to you?

A I am a senior vice president of McGraw-Hill. I'm very acquainted with the way our board of directors and other corporate board of directors operate. And also boards of non-profit institutions operate primarily through a committee structure.

This was nothing new in concept to me. And that's why the recollection of it is indeed a very minor detail, and was a very minor detail in my life.

Q Did you understand what the purpose of the Qualifications Committee was?

A Without question, yes.

Q What was the purpose?

A The purpose of the Qualifications Committee was to recommend to the full board possible nominees for any vacancies that occurred in the board.

Q How did you learn that?

A I learned that, as I said, through working experience in other activities in the corporate and not-for-profit world.

Q Do you have a Director Qualifications Committee at McGraw-Hill?

A Yes.

Q Do you serve on it?

A I am not a director at McGraw-Hill.

Q I take it the answer is no?

A No.

Q Do you know who you replaced on the Qualifications Committee?

A No.

Q Were you designated for a fixed period of time, to serve on that committee?

A I do not know whether the term is fixed in the sense of it must coincide with the annual term of a director, which is one year. ~~And fixed baries with the year of a directorship.~~

Q My question --

A It's one year.

Q You were designated to serve for one year?

A I believe that the reappointments of all committees must be made every year as directors are reappointed.

Q How long have you served on the Director Qualifications Committee?

A I have served since I was first appointed, and I believe you have the date at which I was appointed.

Q Could you approximate the number of years? Is it --

A May I have the piece of evidence that has been introduced or the date ~~of~~ on which I was appointed, so I can answer that question?

MR. SCUTHER: Do you want to show that to her?

MR. TERSIGNI: This is when you were electe a director. I've asked Mr. Souther for the minute designating you a committee member. I don't have them.

Committee, which showed Dr. Robichaud as being a member on September 26, 1973, and again on June 26, 1975.

MR. TERSIGNI: Has that been marked already in evidence?

MR. SOUTHER: I'm not aware that either one of them has been, but I haven't been offering anything.

MR. TERSIGNI: Let's check that. Because you may have answered my previous question that the witness didn't remember.

Let's just check that.

You're referring to Plaintiffs' Exhibit 6?

MR. SOUTHER: Plaintiffs' Exhibit 6 is one of two documents to which I just referred.

BY MR. TERSIGNI:

Q Would you look at Plaintiffs' Exhibit 6, which your counsel has just referred to.

Does that refresh your recollection as to when you became a member of the Qualifications Committee?

A This says that I was a member of the

Directors Qualification Committee on September 26, 1973.

That in no way refreshes my memory as to the particular event on that day.

Q And that was the same day that you become a director.

And I call your attention to Plaintiffs' Exhibit 21 for identification.

Is that correct?

A I became a director on September 26th and I became a member of the Directors Qualification Committee on the same day, according to these two documents.

MR. SOUTHER: Off the record.

(Discussion off the record.)

MR. SOUTHER: Can we take a break now?

MR. TERSIGNI: I guess so.

(Short recess taken.)

Q Dr. Robichaud, after you became a member of the Qualifications Committee on September 26, 1973, did there come a time when you found out who else was on that committee with you?

A Yes, there came a time.

Q Do you recall when that was?

A No.

Q Can you approximate it for us?

A No.

Q Was it before the first meeting of the committee which you attended?

A I don't remember.

Q As of the time you attended the first meeting of the committee, did you know who else was on the committee with you?

A Yes.

Q And who was that?

A The -- I believe the committee was listed in the names that have been committed here.

Q Do you have any recollection of who was on the committee with you other than looking at the documents?

A Yes. There were three of us on the committee.

Q Who were on the committee with you?

A Dr. Kemmerer, John Haire and myself.

Q Do you recall how you found out that Dr. Kemmerer and Mr. Haire were on the committee with you?

A No, I don't.

Q Do you recall what the occasion was for the first meeting of the committee that you attended?

A The occasion for the first meeting was to consider an addition to the board.

Q Was it a specific addition?

A It was a specific addition.

Q Who was that?

A Mr. Leon Kendall.

Q And how did you first find out that Mr. Kendall was being considered for addition to the board?

A The committee met and discussed the qualifications of Mr. Kendall.

Q Did you find out that Mr. Kendall was being discussed for the first time at the meeting?

MR. SOUTHER: I object to the form of the question.

Q Prior to the meeting, did you know that the committee would be considering Mr. Kendall?

A I don't recall.

Q Do you recall who recommended Mr. Kendall?

MR. POLLACK: Object to the form of the question.

Q Do you recall how Mr. Kendall's name was placed on the agenda?

A I do not.

I assume it was placed by the chairman who normally places items on the agenda.

Q Do you have a recollection of the meeting?

A My only recollection was the discussion of the background of Mr. Kendall.

Q Tell us what you remember of that discussion.

A I remember that we discussed his qualifications and that we agreed unanimously that he would be a superb addition to the mutual fund boards because of his previous experience and his background and his knowledge of the mutual fund industry.

Q Did you know anything about his background as of the time of this meeting?

A I did not know anything about Mr. Kendall's background until I was acquainted with his background.

Q At the meeting?

A I don't know whether it was at or before the meeting.

Q Who acquainted you with his background?

A I do not remember.

Q Was it Dr. Kemmerer?

A I don't remember.

Q Would it have been Dr. Kemmerer or Mr. Haire?

A I don't remember.

Q Do you remember what you were told about his background?

A I remember the facts about his background as reflected in this March 27th --

Q Dr. Robichaud, I have the March 27th minutes, and I really am not asking you to sit there and summarize them to me or to read them to me. What I'm interested in is what you remember. What you remember.

A I told you what I remember. And that is that I thought he was a superbly qualified individual to serve on the board of the mutual funds.

Q Do you remember what you were told about his background?

A I don't understand your question. If you do not mean his particular business experience in the past, yes, we were told about his business experience in the past.

Q What were you told?

A We were told some of the facts which

are recorded in the minutes of March 27, 1974.

Q Do you remember --

A Would you like me to read them to you?

Q No, I just told you, I don't want you to read me the minutes.

What I'm asking you is do you have a recollection or don't you remember anything except by looking at these minutes?

Do you have a recollection?

A I have a recollection that Mr. Kendall's background -- I thought at the time that Mr. Kendall's background made him superbly qualified to serve as a director of a mutual fund.

Q Is that all you remember now?

THE WITNESS: May the witnes object to a question?

MR. SOUTHER: It makes it sound as if I should have.

MR. TERSIGNI: I guess counsel should rise to the occasion now.

MR. SOUTHER: I think there's a question that the witness may have. I think she's confused.

Do you mean does she recall the items

which are set forth in the minutes as being items which she was told at the time, or do you mean items other than the items that are set forth there, or do you mean does she recall anything at all?

MR. TERSIGNI: I'm asking her what she remembers.

I'm sure Dr. Robichaud can sit there and read the document the way I can read the document, but I'm not interested in what the document says because I've already got it. I'm asking Dr. Robichaud what she remembers today. She may not remember anything.

MR. SOUTHER: She may not. But even if it's set forth here, do you remember being told some or all of the material set forth here or additional material?

THE WITNESS: Oh, if that's the question, yes, I remember being told specifically what the background of Mr. Kendall's business experience was. Specifically, I remember being told that.

BY MR. TERSIGNI:

Q Do you recall specifically what you were told? Whether he was a steel magnet or an entrepreneur or what have you.

A I remember specifically being told what he had engaged in in the business activities. That he had indeed been a vice president and an economist for the New York Stock Exchange; that he had indeed been president of the Securities Industry Association; that he had indeed recently been appointed as the president of MGIC.

That I specifically recall as part of his background.

And there was other of his background which was given to us, which I now cannot recall.

Q Did you know at that time that Mr. Haire had been with the New York Stock Exchange?

MR. SOUTHER: Object to the form of the question.

A I do not remember whether I knew at the time that Mr. Haire had been with the New York Stock Exchange.

Q Did you say anything at this meeting on the subject of Mr. Kendall's qualifications?

A I said what I repeated, that I thought Mr. Kendall would make -- was superbly qualified from his business experience to serve as a director of a mutual fund board.

And I also thought we would be very fortunate in securing him as a possible director for the funds.

Q What opinion, if any, did Dr. Kemmerer express?

A Dr. Kemmerer expressed the same opinion. There was a unanimous opinion about the qualifications of Mr. Kendall for the board.

Q That includes Mr. Haire?

A Yes.

Q Do you recall who first expressed the opinion that he'd be eminently qualified?

A I do not.

Q At the time of this first meeting of the Qualifications Committee, did you know what relationship, if any, Dr. Kendall had with Mr. Haire?

A No.

Q Did there ever come a time when you became aware of any such relationship between Mr. Kendall and Mr. Haire?

A You're saying any such relationship, and I don't know what such relationship you're talking about.

Q Did there ever come a time when you became aware that Mr. Kendall and Mr. Haire, prior to Mr. Kendall's being considered for nomination, had had a relationship of any kind?

MR. SOUTHER: I object to the form of the question.

A A relationship of any kind. I don't know what that means.

Q Do you know today, Dr. Robichaud, whether Mr. Kendall was acquainted with Mr. Haire prior to the time that you were considering Mr. Kendall for nomination?

A Yes.

Q You do know that?

A Yes.

Q What is your understanding today of that prior acquaintanceship, and the extent of it?

A I believe the acquaintance of Mr. Haire and Mr. Kendall ~~were~~ was through business relationships at ~~National Securities Industries and the~~ Securities Industry Association and the Anchor Corporation, that they must have met on business, those business relationships.

Q When did you first become aware of those relationships?

A I was aware of the fact that Mr. Haire and Mr. Kendall knew one another.

I was aware of that when I first knew of Mr. Kendall's background.

Q That was at the meeting?

A That was at the meeting or before.

I told you earlier that I do not remember the first time that I was first acquainted with Mr. Kendall's background.

Q Does that refresh your recollection as to who advised you of Mr. Kendall's background?

A No, it does not. I don't think it's relevant.

Q Do you know how you came to learn of the prior relationship between Mr. Kendall and Mr. Haire?

MR. SOUTHER: I object to the form of the question insofar as it seeks to establish that there was a prior relationship.

The witness has simply testified that she was aware that Kendall and Haire knew each other through a Securities Industry association.

Q How did you find out that they knew each other?

A How did I find out? Well, I guess it must have --

MR. SOUTHER: Don't guess.

A I don't know how I found out they knew one another.

Q By the way, Dr. Robichaud, when is the last time you spoke with Mr. Kendall?

A On the day after his last board -- attendance at his last board meeting, and I don't know when his last -- his term expired, but it was -- coincidentally we had a board meeting on Monday, and the next day I saw him in Pennsylvania Station.

MR. SOUTHER: Kendall.

THE WITNESS: Oh, I thought you said Kemmmerer.

MR. TERSIGNI: No, Kendall.

Did I say Kemmerer?

Q The question now is when did you last speak with Lee Kendall?

A Was he at our last board meeting? I would have to look back and see whether he attended our February board meeting.

I attended our February board meeting, and that would have been the last time I saw him if he were there.

Q Are you aware that he's given, although not completed, a deposition in this case prior to your testifying?

A I was told by counsel that he had given his deposition.

Q Have you seen the transcript of his testimony?

A I have not seen the transcript of his testimony.

Q When is the last time you spoke with Mr. Haire?

A At the February board meeting.

Q Are you aware that he's given --

A I'm losing track of days.

February board meeting.

Q Are you aware that he's given a deposition?

A I was told by counsel that he had been given -- he had given a deposition.

Q Have you seen the transcript of his testimony?

A I have not seen the transcript.

Q Other than Mr. Kendall, have you participated as a member of the Qualifications Committee in an review of the qualifications of any other potential director?

A No.

Q At the meeting of March 1974, was any other person considered other than Mr. Kendall?

A No.

MR. SOUTHER: Would you like to show her the minutes of that meeting?

MR. TERSIGNI: She's got the minutes. But, again, I'm interested in her recollection, not what the minutes --

THE WITNESS: I'm sorry, the minutes say yes, we did.

I don't recall.

Q Other than the meeting of March 24, 1974, during the period of approximately two and a half years that you've been a member of the Qualifications Committee, have there been any other meetings?

A I do not believe so.

Q Do you have any understanding of what

your duties are, if any, as a member of this committee?

A Yes.

Q What is that understanding?

A My understanding is that it is the function of this committee to propose to the full board nominees for directorships when vacancies occur on the board.

Q My question is what duties, if any, do you specifically as a member of the committee have?

A My duties specifically as a member of the committee would be to aid in the search for qualified individuals and to assess the qualifications of the other individuals who may be called to the attention of the committee, to assess such qualifications in light of the board needs.

Q What is your understanding as to how you would aid in the search for such individuals?

A I would aid in the search by proposing individuals, the names of individuals who I feel would be qualified to serve on the board.

Q Have you ever made such a proposal?

A I have never made a proposal yet for an individual to serve on the board.

Q Did you aid in the search for Mr. Kendall?

A I did not -- did I aid in the search for Mr. Kendall?

Q Yes. As a member of the committee.

A I aided in the evaluation of Mr. Kendall's qualifications.

Q Did you aid in the search for Mr. Kendall?

A When you say did I aid in the search, I do not know what that means.

Q That's your phrase, Dr. Robichaud.

A Well, a search -- I did not initiate the suggestion of Mr. Kendall's name to the board. And that's what I mean by a search, being the --

Q Well -- are you finished?

A Yes.

Q You were on the committee from September 26, 1973, onward; correct?

A Yes.

Q So that as of March 27, 1974, when Mr. Kendall was considered, you had already been on the committee approximately six months?

A Yes.

Q Is that right?

A That's right.

Q And were you attempting to function as a member of the committee?

MR. SOUTHER: I object to the form of the question.

A I considered myself to be able to function as a committee member, yes.

Q And there was a vacancy on the board during this period; correct?

MR. SOUTHER: Object to that question.

Q Was there a vacancy on the board during this period?

THE WITNESS: Counsel?

MR. SOUTHER: If you know, you know. If you don't know, you don't know.

A There was, as far as I knew, no vacancy on the board at that time.

Q Did Mr. Kendall fill a vacancy?

A Mr. Kendall filled another position on the board.

Q Was the board increased so that Mr. Kendall could take a seat?

A I don't recollect the facts of whether the board was increased at that time, because of the pending retirement of Don Kemmerer. I don't know what the sequence of events were, but we did have a pending retirement.

Q Mr. Kendall was being considered because the committee knew that there was going to be a vacancy if there already wasn't one?

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: You may answer.

Dr. Robichaud, unless your lawyer tells you not to answer a question, you may assume you are to answer. I see you're hesitating.

THE WITNESS: I didn't realize you posed a question.

Would you mind repeating it?

MR. TERSIGNI: Repeat the question, please.

(The pending question was read by the reporter.)

A That is not a form of a question.

Q Is that your answer?

A There's no question.

MR. SOUTHER: If you want to put a question, I take it from the witness' statement that she doesn't take that statement of yours to be a question, and she asked you please to put it in the form of a question so she could respond.

BY MR. TERSIGNI:

Q As a member of the committee, what was your understanding of why Mr. Kendall was being considered at that time?

A My understanding as a member of the committee was that there would be a vacancy on the board with the retirement of Dr. Kemmerer.

Q Did you aid in the search for a qualified person to fill that vacancy?

A I proposed no names to fill that vacancy.

Q Whether you proposed any or not, Dr. Robichaud, did you aid in the search for qualified individuals?

MR. SOUTHER: Now, the witness has already testified as to her aid in the search for a proposed candidate.

MR. TERSIGNI: That's not what she said. She can answer in any sense that she likes, but her testimony will stand on its own.

Q The question is did you aid in the search for a qualified replacement?

A I believe I said earlier that I thought there were several functions. One is to search. That is, to identify possible nominees for the board, and, second, to assess the qualifications of all nominees.

Therefore, I follow by saying that I did not aid in the search in the context of my former definition, that is, I did not propose any nominees for consideration at this committee meeting.

Q Did you do anything in connection with a replacement for Dr. Kemmerer other than to appear at this meeting; listen to what you were told about Mr. Kendall, and voice an opinion?

A I do not remember any actions which I took relative to this particular meeting, before the meeting.

Q Are you referring to the minutes now, Doctor? Do you want to add anything?

A No.

Q Prior to this meeting, did you know that there was a vacancy?

A Prior to this meeting I knew that there would be a vacancy.

Q And what, if anything, did you do about that as a member of the committee?

A As a member of the committee I did not propose any nominees for this vacancy.

Q Did you do anything as a member of the committee in connection with that vacancy, prior to the meeting?

MR. SOUTHER: You mean in addition to the fact that she already testified that she may have spoken about Mr. Kendall's qualifications prior to the meeting?

MR. TERSIGNI: I think the question is clear, counsel.

A I do not remember what I did prior to the committee meeting.

Q Did anyone invite you to join in or assist in the search for a qualified replacement?

A No one had to invite me. I understood that was one of my functions.

Q Since Mr. Kendall became a director, succeeding Dr. Kemmerer, I believe you said, has there been any other vacancy on any of the Anchor Fund boards?

A No.

Q Who is presently the chairman of the Qualifications Committee?

A I believe Mrs. O'Connor is the present chairman of the Qualifications Committee.

Q Whom did Mrs. O'Connor succeed on that committee?

A Mrs. O'Connor succeeded Dr. Kemmerer as chairman of the committee.

Q Who designated her as chairman?

MR. SOUTHER: I object to his.

Could you please put a time on this to find out if it relates to the period in question?

Q Can you fix a time for us, Dr. Robichaud?

A No, I cannot.

MR. SOUTHER: I think it's irrelevant to the questions here.

Q When did Dr. Kemmerer cease to be a member of the Qualifications Committee?

A When he ceased to be a member of the board of directors.

Q Do you know when that was?

A No. I would have to go back and identify the date of the stockholders meeting which elected a new board.

Q Can you give us a year?

A I believe it was in the year 1974.

Q When he ceased to be a director and a member of the committee, Mrs. O'Connor succeeded him; is that right?

A Mrs. O'Connor became chairman of the Directors Qualification Committee.

Q Would that have been in 1974, when Dr. Kemmerer left?

A It would have been coincident with the most recent term of election of directors.

Q Would the year have been 1974?

MR. SOUTHER: Mr. Tersigni, Dr. Robichaud has given you her best memory on that, that Mrs. O'Connor replaced Dr. Kemmerer whenever Dr. Kemmerer went off the board. I really think we've gone far enough.

MR. TERSIGNI: She said 1974 --

MR. SOUTHER: Was her recollection at the time, and now you've asked her the same question.

I don't think she can enhance on her

recollection.

MR. TERSIGNI: Let's go off the record.

(Discussion off the record.)

MR. TERSIGNI: Counsel have had discussion and there's now some question as to whether or not there might be an error on Plaintiffs' Exhibit 6, which was furnished to us by counsel for the fund, and specifically I suppose we're talking about the fourth entry on this document in connection with the date of June 26, 1974.

We're trying to decide exactly when Dr. Kemmerer left and may have ceased to be a member of the committee.

And also I would ask that any other possible inaccuracies, if there are any, in this schedule, be corrected, and that we be advised of the correct information.

MR. SOUTHER: Fine.

BY MR. TERSIGNI:

Q Dr. Robichaud, did there come a time when you learned that you and four other directors would be asked to make a decision as a disinterested quorum?

MR. SOUTHER: I object to the form of the question.

A There came a time that I learned that as one of five board members, four other board members, I was not a party to the Lasker suit.

Q And when was that time?

A The time was after the settlement or coincidentally with the settlement of the Goldman, Sachs suit.

Q How did you learn of the settlement of the Goldman, Sachs suit?

A I learned, as I remember the final date of the settlement, by telephone.

I believe that we were called, I forgot by whom, to be told that the negotiation which we had approved had taken place.

Q Did you vote in favor of the final settlement?

A Yes.

Q Was that at a board meeting?

A Yes.

Q Do you recall when that board meeting occurred?

A No, I don't. I don't remember whether

it was June or when it was.

Q Was it at the same board meeting that you first learned that you would be making a decision as one of the five directors, as you've just mentioned?

A It was not at that same board meeting.

Q Was it at the next board meeting?

A I don't know whether it was at the next. It was at the July board meeting, as I recollect.

Q And what did you learn at that meeting on this subject, and how?

A On what subject?

Q On the subject of your making a decision as one of five disinterested directors.

A I learned at that meeting that a suit called the Lasker Suit would now be up for consideration because of the settlement of the Goldman, Sachs claim.

Second, as a result of a board discussion at that time, it was agreed that the five directors who had not served on the board at the time of the purchase of the Penn Central paper would constitute the board of directors being a quorum, would constitute the board of directors of Fundamental Investors for consideration of action to be taken with respect to the Lasker suit.

Q When you voted in favor of the Goldman, Sachs action, did you give any consideration to any possibility of recovery in the Lasker case?

MR. SOUTHER: I object to the form of the question, because you say -- your question is when you voted in favor of the Goldman, Sachs action, which was commenced long before she became a director.

MR. TERSIGNI: All right.

MR. SWEET: The word is settlement.

MR. SOUTHER: He didn't use the word "settlement," Mr. Sweet, and therefore the question is confusing.

Secondly she already testified that one of her votes was on the telephone, approving the settlement.

Do you want to rephrase your question?

MR. TERSIGNI: I'd be happy to.

Q When you voted in favor of the Goldman, Sachs settlement, did you give any consideration to the possibility of a recovery in the Lasker action?

A No, I did not.

Q Were you aware of the Lasker action at that time?

A I was not aware of an action designated as Lasker.

Q Were you aware of an action against Anchor and others on behalf of the fund arising out of the Penn Central investment?

A I was aware that there was some litigation which was pending on the Penn Central ~~partnership~~ investment, but I was not acquainted with the specifics of the claim.

Q When did you first become aware that that litigation was pending?

A I do not remember when I first became aware that the litigation was pending.

Q Were you aware of it when you became a director?

A I do not believe so.

Q Were you aware of it when you attended the meeting relating to Mr. Kendall's qualifications?

A I have to get my dates in order. The meeting with Mr. Kendall's --

Q It was March 1974.

A 1974.

No, I don't remember. I don't remember when I became aware of it.

Q When did you for the first time become aware of the specifics of the Lasker action, if ever?

A I became aware of the specifics on July -- in July 1974, following the settlement of the Goldman, Sachs case.

Q Was that at this board of directors meetings that you've told us about?

A That was the first extensive awareness that I had of the case.

Q Was that the first--

A And --

Q Go ahead.

A I believe that was the first identification I had with the name Lasker, in the case.

Q Was that the first time that you knew that Mr. Haire was a defendant in that litigation?

A I don't remember.

Q Was that the first time that you found out that Dr. Kemmerer was a defendant?

A I don't remember if that was the first time or not.

Q Who at the board meeting of July 1974 furnished the information that you've been describing, to you?

A Roger Wickers.

Q How long did he speak on the subject of the Lasker litigation, approximately?

A I do not remember.

Q Do you recall his making a somewhat formal presentation on that subject?

A I do not remember.

Q Do you recall his making any kind of a recommendation as to what action ought to be taken?

A I do not recall that.

Q Do you recall his making any suggestion as to what procedure ought to be followed with respect to the Lasker litigation?

A I'm not sure I understand the term "what procedure."

Q Did anyone at this board meeting of July 1974 suggest that the five so-called disinterested directors should be designated to make a decision on behalf of the funds with respect to the Lasker action?

A I don't remember whether any individual suggested it, but the suggestion certainly came from a group discussion of the question.

Q Did you participate in that group discussion?

A I participated in the group discussion, I assume.

Q You assume. Do you recall?

A I recall that I was in favor that the five outside directors acting as a quorum for the full board be the individuals to decide how the action should proceed.

Q My question, Doctor, is with whom at that meeting did that suggested procedure originate?

A I don't remember.

Q Do you recall Mr. Wickers suggesting that this was an appropriate procedure?

A I don't remember.

Q You said there was a group discussion. Is that correct?

A That's right.

Q Did Mr. Haire participate?

A I don't remember.

Q Mr. Hutchinson?

A I don't remember.

Q Mr. Kemmerer?

A I don't remember.

Q Mr. Burr?

A I don't remember the specific individuals.

Q Do you remember anybody at that meeting, specifically, who made a statement?

A No. I don't remember identifying any statement with any individual at that meeting.

Q Do you recall whether Mr. Haire, whatever he said, whether he spoke on this subject?

A I don't remember.

MR. SOUTHER: Excuse me. Which subject?

MR. TERSIGNI: On the subject of the disinterested quorum and the five directors making a decision on the Lasker action.

A I don't remember any specific comments attributed to any specific individuals.

Q Do you recall anybody suggesting at this meeting that the Lasker action should be permitted to proceed?

A No.

Q Do you recall anything that Mr. Kendall said?

A No.

Q Mr. Laun?

A No.

Q Mrs. O'Connor?

A No.

Q Mr. Stephens?

A No.

Q Do you recall anything that you said?

A I recall only that I voiced my opinion that the five directors who were not on the board at the time of the purchase of the Penn Central, constitute a quorum of the full board to decide what action should be taken with respect to the suit.

Q You say you voiced your opinion in favor of that?

A Yes.

Q Did you ask any questions about whether such a quorum was proper?

MR. POLLACK: Object to the form of the question.

Proper in what sense?

MR. TERSIGNI: You may answer.

A What do you mean by "proper"?

Q Did you ask any questions on the subject of the quorum before you voted?

A No.

Q Correction: Before you expressed your acquiescence in the suggestion.

A No, it was suggested by someone, and again, I can't identify the individual, that a quorum, according to the laws of incorporation, could consist of as few as five people.

And that question, I remember, was discussed.

Q Do you recall whether Mr. Wickers discussed that?

A I don't remember.

Q Was Mr. Wickers an attorney?

A Was he?

MR. SOUTHER: You mean was he as opposed to is he?

MR. TERSIGNI: If the witness knows, I assume she can tell us.

A I believe he --

Q Was and is?

A I believe so.

Q You certainly had no familiarity with the quorum laws of the State of incorporation, did you?

MR. SOUTHER: I object to the form of the question.

Q You may answer.

A I was not acquainted with the quorum law of companies incorporated in the State of Delaware.

(Continued on page 77.)

Q Was it your understanding as a director that you were receiving legal advice when this statement was made to you?

MR. SOUTHER: I object to the question.

A No.

Q Why were you in favor of the suggestion, Dr. Robichaud?

MR. SOUTHER: The suggestion that the five make a decision?

MR. TERSIGNI: Yes.

MR. POLLACK: Objection. She has already been asked that and has answered the question.

MR. TERSIGNI: You may answer. Your first time.

A I believe that the five directors who were not associated with the board at the time of the purchase should be the individuals who would decide the course of the action.

Q Why?

A Because they were not ~~consumed~~ named in the suit.

Q When you were designated as a nominee for election to the board, are you aware whether or not Mr. Haire voted in favor of that designation as a director?

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: You may answer.

MR. POLLACK: I don't understand the question. May we have it reread, please?

(Pending question read by the reporter.)

MR. POLLACK: I have a further objection which I would like to put on the record.

The questioner has gone over the circumstances of this witness as a potential member of the board of directors at great length, and I think to jump out of sequence back into that subject at this time is most disorganized questioning and somewhat unfair to the witness.

MR. SOUTHER: I'd like to make clear that my objection goes to the confusion as to what you mean by designate.

Do you mean when the Qualifications Committee recommended Dr. Robichaud to the board; when the board recommended Dr. Robichaud to the shareholders, or whether Mr. Haire may have voted in favor of her as a shareholder?

MR. TERSIGNI: What I mean is this, the minutes which we already discussed indicated that the board designated Dr. Robichaud as a nominee for election to the board, and I'm asking the witness whether she knew at the time of the July, 1974 meeting that Mr. Haire, as a member of the board, had voted in favor of your being designated as a nominee for election as director.

MR. SOUTHER: I object to the form of the question.

A I have no knowledge of what went on in the selection of me as a nominee for the board, as I was not present at any of those deliberations.

Q Was it your understanding that the board of directors had, in fact, voted in favor of designating you as a nominee for director?

MR. SOUTHER: Mr. Tersigni, you were over all this. Would you tell me what the purpose of going over it again is, please? This witness, as you know, has business appointments this afternoon. We do have to finish this morning.

MR. TERSIGNI: I suggest the quickest way to finish is to let her answer the question.

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MR. SOUTHER: I suggest the quicker way is to ask the question once or twice, not half a dozen times. Can you tell me why you are going over this?

MR. TERSIGNI: No, sir.

MR. SOUTHER: I'll direct her not to answer then.

Q Did you know that Mr. Haire was a defendant in this action at this board meeting of July, 1974?

A At the board meeting of July, 1974, yes.

Q And that you would be asked to vote on the question of whether the action should proceed against the defendants, including Mr. Haire?

A Yes.

Q Did it make any difference to you that Mr. Haire had voted in favor of your nomination as a director?

MR. SOUTHER: I object to the question.

The witness has already testified that she doesn't know whether or not he voted in favor of her nomination.

MR. TERSIGNI: Unless counsel directs you not to answer, we will finish quickly if you simply answer the question. If your lawyer tells you not to answer, then you won't answer.

MR. SOUTHER: It is not necessary to give the witness instructions, Mr. Tersigni.

MR. TERSIGNI: Well, she's just sitting there and time is going by.

MR. SOUTHER: Come on, please, you are wasting time and building up a record needlessly. She is not just sitting there.

MR. TERSIGNI: Could we have an answer?

THE WITNESS: Would you repeat the question, please?

(Pending question read by the reporter.)

A I did not know whether Mr. Haire voted in favor of my nomination as a director.

Q Did it make any difference to you that Dr. Kemmerer recommended you to the board as a nominee?

MR. SOUTHER: I object to the form of the question.

A Made any difference to what?

Q To your being willing to undertake this assignment.

A Absolutely none.

Q Did it make any difference to you that Mr. Burr had voted in favor of your nomination?

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MR. SOUTHER: Object to the form of the question.

A I did not know whether Mr. Burr had voted in favor of my nomination.

Q Do you know whether anyone voted against your nomination?

A I do not know.

Q Was Judge Fuld mentioned at this meeting of July 24th?

A Judge Fuld's name was mentioned.

Q And who mentioned it?

A I believe Roger Wickers mentioned it.

Q What did he say about that?

A I believe, as the minutes reflect, he gave us the background of Judge Fuld.

Q Did he tell you for what purpose he was discussing Judge Fuld?

A I believe, as the minutes reflect, that he mentioned Judge Fuld's name in connection with any desire on the part of the five directors, if they so wished, to have counsel on this particular action. I believe that was the association that was mentioned with Judge Fuld.

Q Did he mention any other attorneys as

7 possible counsel?

A I believe there was some other names mentioned as possible counsel, but I don't remember the other names mentioned.

Q Who selected Judge Fuld?

A The five directors who were acting as the quorum for the full board of directors selected Judge Fuld.

Q Did some one of the five propose that it be Judge Fuld?

A It was a unanimous decision of the five clearly agreeing that Judge Fuld should be selected.

Q Was it your understanding that you were selecting Judge Fuld as opposed to some other possibilities?

A It was my understanding that we were selecting Judge Fuld as the extremely qualified person to perform the work that we felt necessary to perform.

Q I understand that. But my question is, was it your understanding that you were voting for Judge Fuld as opposed to some other possibilities?

MR. SOUTHER: I object to the form of the question.

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A It was my understanding that the five directors had the full power to select any individual, if they wanted such an individual, to help them on their function with respect to this suit?

MR. SOUTHER: Off the record.

(Discussion off the record.)

Q What instructions were given to Judge Fuld in this regard, if you know?

A The instructions which were to be transmitted to Judge Fuld were to investigate all of the facts concerning the purchase of the Penn Central paper, the suit of Goldman, Sachs, and the possible courses of action that the five directors could take with respect to this.

Q Who communicated those instructions to Judge Fuld?

A I believe these instructions were communicated by Roger Wickers to the Judge. That is my recollection.

Q Who instructed Mr. Wickers to do that?

A The five directors who were acting as a quorum for the full board.

Q Was there a vote taken on who should communicate with the Judge?

9 A There was no vote taken on who should communicate with the Judge.

Q Who gave the instructions to Mr. Wickers?

A I believe we five gave them --

Q All together?

A That must have been neat if we did.

Q Who did it?

A I do not remember, but I know that the five of us agreed completely on the choice and the delegation of function.

Q Did you know how much the expense to the fund would be by reason of the retention of Judge Fuld when you voted in favor?

A No.

Q Were there any inquiries on that subject?

A No.

Q Did you consider that relevant?

A No.

Q Did you or to your knowledge any of the other five so called disinterested directors communicate with Judge Fuld prior to December 5, 1974, as of the July, 1974 meeting?

MR. SOUTHER: Object to that question. It is unclear.

MR. TERSIGNI: Let me rephrase it.

Q From July, 1974, this board of directors meeting, to December 5, 1974, did you or to your knowledge, any of the other five so called disinterested directors, communicate with Judge Fuld?

A I did not communicate with Judge Fuld, and to my knowledge, none of the other four did either.

MR. SOUTHER: Off the record.

(Discussion off the record.)

MR. TERSIGNI: We can take a break now.

(Short recess taken.)

(continued on next page.)

Q Dr. Robichaud, subsequent to July, 1974 how many times did the so-called disinterested quorum meet.

A Well, we met on December 18th; we met on January 6th, all of us, and we met together, I believe, on a later date in January 20th, 21st, 22nd, sometime around there.

Q When did the quorum make its decision?

A We made a decision at the first January meeting. There were four of us present at that January meeting and we made the decision at that meeting.

Q Between July, 1974, the board meeting in that month, and January 6, 1975, did you have any contacts with Mr. Haire?

A What do you mean by contacts?

Q Did you speak with him?

A Between July and January?

Q January 6th.

A I attended the Fund board meetings at which time I spoke to Mr. Haire.

Q Did you have any other contacts with him?

A Outside the board meetings, I had no contacts with Mr. Haire.

Q Did you have any contacts with Mr. Wickers during that period?

A Outside of the board meetings,no contacts.

Q Did you have any contacts with Mr. Wickers during that period with respect to the decision being considered and to be made by the so-called disinterested quorum?

MR. SOUTHER: Would you read that question back to me, please?

(The last question was read by the reporter.)

MR. SOUTHER: You mean the decision that the quorum was to make as to what, if any, action Fundamental should take?

MR. TERSIGNI: Right. The same one we have been talking about all these days.

MR. SOUTHER: I didn't know that the witness had been here all these days. As a matter of fact, she hasn't been.

A No contacts outside of what is recorded in the regular minutes for our meetings.

Q What was the occasion for the December 18th meeting of the quorum?

A I don't know what you mean by that word "occasion."

Q How did it come to pass that the quorum met on December 18th as opposed to a week later or a month earlier, so on?

A I believe December 18th was coincidentally a board meeting date.

Q Who decided that the quorum should meet on that date?

A It was decided that the quorum should meet on that date because Judge Fuld's opinion had been sent to us. And we got together on that date. It was a natural meeting date at which we were all together.

Q Do you recall who suggested that the meeting be held on the 18th?

A I do not.

Q Was Mr. Kendall the chairman of the quorum?

A As I remember, our first order of business, when we met on December 18th, was to decide how we would continue in the process. And by unanimous choice, we elected Mr. Kendall as chairman of the group of five.

Q Who suggested Mr. Kendall as chairman?

A I believe I might have suggested Mr.

Kendall as chairman.

Q What reason did you have for that suggestion?

A I believe that Mr. Kendall has unusual intellectual capabilities, and I think he has an unusual knowledge of the mutual fund industry. And I believe that he was highly qualified to be chairman.

Q You say that Judge Fuld's report had been received by this time, as of December 18th.

A Yes. I believe Judge Fuld's report, the first part of it, was dated December 5th. Was it not?

Q Whatever the date was, Doctor, do you recall having received it?

A I do.

Q When did you receive it?

A I received it after it was mailed to me.

Q Had you had an opportunity to review it and study it prior to the December 18th meeting?

A Yes.

Q Can you approximate how long prior to the December 18th meeting you had received Judge Fuld's report?

A I cannot. Other than deriving it from the date of the memorandum that was forwarded to me.

Q However you derive it, can you estimate whether it was days, hours, weeks?

A I must have received it between one or two weeks in advance of the December 18th meeting.

Q And what, if any -- are you finished?

A Yes.

Q What, if anything, did you do with respect to the report after you received it?

A I read it very carefully, and I considered the information in it.

Q Did you read it more than once?

A Yes, I did.

Q Did you make notes?

A No, I did not make any notes.

Q Did you have any questions?

A Yes, I had some questions on various aspects of it.

Q Did you have many questions?

A What are many?

Q More than ten.

A I --

Q When I read Judge Fuld's opinions, I usually have at least ten questions.

A This is the first opinion of Judge Fuld I read.

I had some questions. I cannot assign a quantitative value to the number of questions I had.

Q Did you jot them down somewhere?

A I jotted them down, and brought them along to the meeting, yes.

Q Do you have those notes or whatever they were?

A No. I discarded them after the meeting.

Q Did anybody else have notes at the meeting?

A I don't remember.

Q Did anybody else ask questions at the meeting?

A Yes.

Q And to whom did you ask your questions, the ones you had jotted down?

A I don't remember. I believe I had some -- I had questions for the Judge.

Q Were these things that you felt were important, and that you wanted to inquire about?

A Yes.

Q Did you feel that they were questions that you would want answered before you could make the kind of decision you were being asked to make?

A Any questions which I asked would have been of that nature.

Q Did the answers you received help you to make the decision you were asked to make?

A The answers I got added to my knowledge about the case, and anything which adds to one's knowledge, I believe, aids one's ability to draw a conclusion.

Q Do you feel you would have been able to make your decision without having the questions answered?

A No.

Q What were the questions, Doctor?

A I don't remember the specific questions I had at the time, because concurrently in the session Mr. Stephens had raised a number of questions of facts. Other people were raising questions. And I do not remember how my questions differed from everyone else's questions.

Q Can you tell me anything about the questions that were raised in your mind, and what you believed to be answered before you could make a decision?

A Yes. I had questions with respect to the judge's memorandum of the 5th, as to the exact steps that had been taken with respect to the purchase of the paper. And such questions were raised in the letter that Bill Stephens wrote to all of us.

Q Those were important questions; were they not, to you?

MR. SOUTHER: Object to the question.

MR. TERSIGNI: You may answer.

A I said that any questions which I raised were important to me.

Q And you had to have them answered before you felt you could make a decision?

MR. SOUTHER: I object to that question. It's repetitious.

Q What were you told that enabled you to go ahead and make a decision? And when I say what were you told, I mean what were you told in response to these questions.

A We were given additional information in response to questions on the facts surrounding the case.

Q I'm asking you what were you given in response to your questions.

MR. SOUTHER: Mr. Tersigni, if the witness cannot remember the specific questions that she asked a year and a half ago, I think it would be just as difficult for her to remember the specific answers she received.

MR. TERSIGNI: I'd like the witness to answer the question. I'm sure counsel is very adroit, but I think the witness can answer the question.

MR. SOUTHER: I'm quite content with the witness and not counsel.

MR. TERSIGNI: So why don't you let her answer.

MR. SOUTHER: I'm pointing out the fallacy in your question.

A As I said earlier, I did not remember the specific questions I raised and I'm therefore unable to answer the --

Q Apart from any specific questions, I'm asking you, can you tell me in general terms what it was that you were questioning and what it was that you were told that helped you make a decision?

MR. SOUTHER: You mean the specific questions that Dr. Robichaud asked that helped her or the questions that were asked generally that --

MR. TERSIGNI: I'm talking about her questions. Her questions.

MR. SOUTHER: I object. It's been asked and answered.

Q Do you have anything else you'd like to add?

A No. I think I answered your question.

Q You told me you could not recall the specific questions. I'm not asking you about specific questions. I'm asking you to recall anything in general terms about what you were asking and what you were told.

A We were given specific, more specific information on the facts presented with respect to the purchase of the Penn Central paper, with respect to the attempts to have Goldman, Sachs repurchase the paper.

We were given more specific facts on the alternatives that the judge had presented in his December 5th memorandum.

Q When you read the judge's December 5th memorandum, did you understand the alternatives that were discussed?

A I felt that they needed further clarification, and he did that in his December, as

I remember, his December 18th supplement to his December 5th memorandum.

Q Did you, yourself, have any questions about the discussion of alternatives in the December 5th memorandum?

A I had some questions, and I cannot recall them.

Q When did you see the December 18th supplement?

A I saw the December 18th supplement on December 18th.

Q Did you see it before or after the meeting?

A I saw it during the meeting?

Q Did you study it during the meeting?

A Yes.

Q Did it clear up all your questions?

A We still had questions for the judge after we had read the December 18th supplement.

Q Did you, yourself, have questions?

A I believe I did. But I cannot recall them.

Q Do you have any recollection, even in general terms, what your questions were or anything that may have been confusing to you?

A No. Other than amplification of the

causes of actions and the alternatives that we had proposed.

Q What did you understand the alternatives to be?

A I understood that the judge had suggested that there were three alternatives. And they are written, I believe, in the minutes. If you would like me to repeat them, I will repeat --

Q I'd like your understanding of them. I've read the minutes.

A My understanding was that the first alternative was to join the two stockholders in a suit against Anchor and the directors.

The second alternative was to dismiss the suit.

And the third alternative was to remain neutral and let the suit proceed.

Q Did you personally select in your own mind one of those three alternatives?

A I personally selected in my own mind the best alternative.

Q Which was?

A Are you saying when or are you-- you're not attaching this at the date I selected it?

Q No. I'm simply asking you which alternative did you select.

A I selected in my own mind that for the best interest of the Fundamental Investors, we must move to dismiss the suit.

Q Why did you reject the alternative allowing the action to proceed?

A Because I did not think it was in the best interest of the Fundamental stockholders to let the action proceed.

Q Why?

A First of all, I did not think that the claim had any justification. And second, I thought it would be destructive to the stockholders of Fundamental to let it proceed.

Q Why did you believe it would be destructive?

MR. FRIEDMAN: I object to this line of questioning as going beyond the bounds of Judge Fuld's opinion; and further on the grounds that it's an improper attempt to inquire into the basis of the board's decision.

MR. TERSIGNI: You may answer.

THE WITNESS: Counsel, should I answer.

MR. SOUTHER: Do you have the question in mind or would you like it reread?

THE WITNESS: May I have the question reread.

(The pending question was read by the reporter.)

A I believed it could hurt the Fundamental Investors shareholders in several ways. First it could hurt them in the sense that the Anchor Corporation, during the pursuit of the suit, would have more difficulties in providing the investment advice to the good of the Fund.

Second, I thought it would hurt the stockholders because if we directors, as we felt, had believed that there was no merit to the case, the fact that we let the suit proceed would not indicate ~~not~~ this attitude to outsiders. But rather that we did think that there was some merit to the case.

Now, this is terribly important. It's important to the individual stockholders in the confidence that they have in the mutual fund, and it's also important to the dealers upon whom we depend to sell the mutual fund. And therefore, I thought that believing as we did that there was no merit to the case, it would be destructive to the stockholders to let it continue.

Q Did you believe that it would undermine confidence in Anchor to permit the action to proceed?

A I believed it would undermine confidence in the mutual fund, which was my interest and the interest of the others as a desirable investment.

Q Did you give consideration to the possibility of allowing the suit to proceed against defendants other than Anchor?

A You have to clarify for me who the defendants other than Anchor -- do you mean the directors, the other --

Q You knew who the defendants that you were voting about were; didn't you?

A The outside directors at the time of the suit.

Q Did you focus in on each individual, or did you just focus in on Anchor?

A No. We focused in on the fact that it was a suit against Anchor, and the suit against the directors who were directors at the time of the purchase of the Penn Central commercial paper.

Q And did you conclude that to permit a

suit against the advisor to continue would undermine a confidence in the advisor?

MR. SOUTHER: Object. She just answered that she -- quite, to the contrary -- that she thought it would undermine confidence in the Fund.

MR. TERSIGNI: You may answer.

A I did in my last answer tell you that it was the confidence in the Fund that was the core of my central interest.

Q In your mind, why would a suit against the advisor undermine confidence in the Fund?

MR. POLLACK: Object on the grounds that the question has been asked and answered.

MR. TERSIGNI: Do you want it reread now?

A I believe I answered the question in my earlier --

Q You have no further answer to make?

MR. SOUTHER: You don't have to --

THE WITNESS: Should I repeat my answer?

MR. SOUTHER: No.

Q What about permitting it to proceed

aginst Mr. Burks, why did you feel that that would be destructive?

MR. SOUTHER: Object to the form of the question.

MR. TERSIGNI: You may answer.

A I believe that to let the suit to continue in any way, as I said earlier, would make it appear to either the shareholders or the people who distribute and sell the shares, would make it appear that the directors felt that there was misconduct, and there was a legal basis for the claim.

Q Did you believe it would make it appear that there had been misconduct on the part of the directors of the Fund as well as the advisor?

A Indeed. There could not be misconduct unless it was on both the directors and on the Anchor investors.

Q And that would include the outside directors as well as the affiliated directors?

A It would.

Q And you were a director; were you not?

A I was not a director at the time that the Penn Central paper was purchased.

Q I understand.

Did you believe that allowing the suit to continue would undermine confidence in the then existing board of which you were a member?

A I had not considered whether it would undermine confidence in the then existing board. That was not part of my consideration.

Q Did you consider it would undermine confidence in your predecessors?

A It would certainly --

MR. SOUTHER: Could you define what you mean by "predecessors"?

MR. TERSIGNI: I mean named directors who were no longer directors as of the time Dr. Robichaud was giving her consideration to this question.

MR. SOUTHER: There is no way in which that is relevant, to consider whether somebody's confidence would be undermined as to somebody who existed in past years.

MR. POLLACK: I also object on the grounds that this has nothing to do with the scope of the discovery as outlined by Judge Werker, which relates to the relationship between the disinterested quorum and the

Directors Qualifications Committee.

MR. TERSIGNI: You may answer.

MR. SOUTHER: I'll direct her not to answer.

Q Have you given me all of your reasons, now, for your decision, Dr. Robichaud?

A I believe I gave you some of the important considerations which went into the decision.

Q Are there any other important ones that you left out, that you can remember, anyway?

A Well, I don't believe I -- I don't believe I remember what I gave you. If you want to repeat it. I believe I gave you the important considerations.

Q Do you recall on the day that the quorum made its decision, receiving a copy of a memorandum from Mr. Souther which is marked Exhibit 19 for identification?

MR. FRIEDMAN: I object to this line of questioning on the grounds I previously stated.

A I remember receiving this, yes.

Q Did you read that memorandum before you made your decision?

A We read this memorandum before we made the decision, yes.

Q And do you know how that memorandum came to be distributed to the quorum?

A Yes. It originated because of some question that had been asked in the -- either in the December 18th meeting, or following the December 18th meeting.

Q And who raised those questions?

A I don't remember.

Q Did you raise them?

A I might have. I don't remember. I was interested in the subject.

Q Did you know what the questions raised were, as a member of --

A All the questions -- no. Because we passed our questions directly to the chairman after our December 18th meeting. I did not know the questions that other individuals were indeed raising. Because our communication was from each of us to the chairman.

Q Were these questions passed on in writing or orally?

A Mine were not passed on in writing. Mine were passed on by telephone call which I made from my office to the office of Lee Kendall.

Q Do you recall any of the questions that you raised?

A Yes. One of the questions I raised was I wanted to have substantiation that there had been no association between Judge Fuld and the Anchor Corporation or any of the defendants in the suit.

I also,in going through my work papers, had recognized that we had, I had no written biographical sketch on Judge Fuld, even though I had been completely notified or had his biographic sketch described, and I wanted to see a written biographical sketch.

Those were two of the pieces of information I know I had requested.

And I might have requested a summary to describe what the process would be if indeed we did have to terminate the contract of the investment advisor. I might have originated that question. I don't remember.

Q Did you give any consideration in making your decision to Plaintiffs' Exhibit 19 for identification, Mr. Souther's memorandum of January 6th?

A This was one of the facts involved in the total consideration.

Q What consideration did you attach to

this document?

A I attached to this document that it would fundamentally be in the bad interest of the stockholders to proceed with the suit. And that was the importance I attached to this document.

Q Can you explain why?

A Yes. As this document indicates, that if we were to proceed, let the suit proceed, there would be a question as to whether we would have to terminate the agreement with the investment advisor. And that, in seeing the sentence alone, would clearly not be in the interest of the stockholders.

Q Did you give consideration to the possibility of a proxy contest in the event that you terminated the advisor?

A I gave absolutely no consideration to a proxy contest other than in the sense, as I believe it is mentioned in this document, that it certainly might make it difficult to get a qualified investment advisor to fill in on a contract in the particular situation.

Q Did you consider that Judge Fuld was independent counsel to the quorum?

A I don't know what you mean by "independent counsel."

Q How did you conceive of Judge Fuld? What was his function?

A Judge Fuld's function was to provide to the five directors who were serving as a quorum of the full board, was to provide a resource help to identify for us the facts. And I believe I mentioned earlier the areas and what I conceived the three functions of the judge were to be.

Q What did you conceive of Mr. Souther's function to be?

A I conceived Mr.Souther's function to be, to act as counsel for the Fund.

Q Did you understand that he was advising the quorum as opposed to the full board?

MR. POLLACK: Who is "he"?

MR. TERSIGNI: Mr. Souther.

A I don't know what you mean by advising the quorum.

Q Did you understand he was giving legal advice to the quorum?

A I did not understand Mr. Souther's role to be the same as the role we had defined for Judge Fuld.

Q What was the difference, in your mind?

A The difference was a very real one. And that is we wanted highly qualified,[not that you're not qualified], individual from the outside to give us a fresh look, objective look, at the facts surrounding the claim, and Judge Fuld's previous experience, and particularly his judicial experience, we thought made him highly qualified to do this.

Q You referred to someone from the outside.

A Who had not been associated with the Fund.

Q Did you consider Mr.Souther to have been associated with the Fund?

A I considered Mr. Souther in his association as counsel, to have been associated with the Fund.

Q And there came a time when certain questions were referred to Mr. Kendall which Mr. Kendall referred to Mr. Souther, not to Judge Fuld; is that correct?

MR. SOUTHER: Object to the form of the question.

A Yes. They were different kinds of questions than we had asked Judge Fuld.

Q If you had known on January 6th that a different special counsel, different from Judge

Fuld, had previously given an opinion or made a review of the Penn Central investment, would you have wanted to have seen that or known what that review disclosed before making your decision?

A No. We employed Judge Fuld to give us a complete review of all of the facts surrounding the suit. We thought Judge Fuld was highly qualified to do this. And, therefore, it was not necessary, and it would have been unwise to consult any previous counsel.

Q If you had known that the board had consulted someone of equal competence, who had given advice on this subject, would you have wanted, before you made up your mind, to at least know what advice had been given?

MR. SOUTHER: Object to the form of the question.

MR. POLLACK: Object to the form of the question.

MR. TERSIGNI: You may answer.

A No.

Q Why not?

A Because I didn't think it bore on what we wanted Judge Fuld to do. Had no relation to what we needed, what we saw as a group that we needed and what we asked the judge to do for us.

MR. SOUTHER: Off the record.

(Discussion off the record.)

Q When you met with Judge Fuld, did Judge Fuld say to you and the other directors, the other quorum directors, that you should arrive at your decision independently? Do you recall that?

A I believe the judge did say that.

MR. SOUTHER: I'm sorry, could you read me the question and answer?

(The pending question and answer was read by the reporter.)

Q What did you understand independently meant?

A I understood that independent in that case would be independent of any of the defendants who were involved in the suit.

Q Before the quorum took a vote, or before members of the quorum that were present on January 6th took a vote, was there discussion among the four?

A Oh, yes. There was discussion among the four.

Q Did the four of you have a discussion

in private, when I say in private, I mean after counsel or anybody else had been asked to leave, before you took your vote?

A I don't remember whether counsel was there when we took a vote or not.

Q I'm not talking about the formal vote as such. But I'm saying, did the four of you deliberate in private?

A I don't remember.

Q But you do recall deliberations among the four of you?

MR. SOUTHER: The question you asked was there a discussion. Do you mean something different from deliberation?

MR. TERSIGNI: No, I mean discussions in the sense of deliberations.

A Well, I do remember that we met for several hours and therefore we were talking when we were meeting.

Q And were there discussions of the pros and cons of various alternatives?

A There were discussions and review of the alternatives and the pros and cons.

Q Did everyone agree on the same alternative that you finally selected?

A Everyone agreed unanimously.

Q Did everyone agree from the very beginning on that alternative?

MR. SOUTHER: Object to the form of the question. What do you mean by the beginning?

MR. TERSIGNI: From the very beginning of the discussions on the deliberations on January 6th.

A There was no indication. A group like this doesn't start a meeting saying I think this or I think that. As any executive group would not do. Instead we investigated the subject in an orderly manner before we were ready to come to a final conclusion.

Q When you were about to come to your final conclusion, did anyone suggest an alternative or or consideration of an alternative other than the one which was ultimately selected?

A There were only three alternatives being considered, and we weighed the pros and cons of these alternatives in arriving at a final decision.

Q Did any of the directors speak in favor of allowing the action to proceed?

A None of the directors concluded that the action to proceed was the best course of action.

Q I'm not asking you what they concluded. I'm saying did anyone during the course of the deliberations speak in favor of or say that it might be advisable to permit the action to proceed, without the board realigning itself?

A In the course of our discussions, I don't remember any director assuming a position that it would be favorable to do this or to do that with respect to any of the alternatives. We simply talked about the facts associated with each of the alternatives, and the pros and cons.

I don't remember anyone having a predisposition to one --

Q All right.

You say there were discussions of the pros as well as the cons in connection with each of the three alternatives?

A If any pros and if any cons, they were identified.

MR. SOUTHER: The words "pros and cons" came from you, Mr. Tersigni.

identification, which is a set of minutes ably drafted by Mr. Souther and Mr. Kendall, and on page 3 it shows alternative No. 3. I'm asking the witness what were the pros that were discussed in favor of that particular alternative before it was rejected.

MR. SOUTHER: I object to the question on the ground it assumes there were pros discussed with respect to that. And I think the only relevant question is that they did reach their decision and how they reached it. And she answered that question. I think this is a useless inquiry and I'll direct her not to answer.

Q Were there any pros discussed in connection with alternative No. 3?

A I can remember no important "pros" associated with alternative 3.

Q Were there any pros associated with alternative 1?

A I can remember no important pros concerned with alternative 1.

Q So the only alternative that any of the directors saw any pros connected with was alternative

No. 2?

A The important pros were associated with alternative 2.

Q I'm asking you any pros, whether you consider it important or not.

MR. POLLACK: I object to this line of questioning.

MR. SOUTHER: I object to this.

MR. POLLACK: The witness testified to discussions and I think to try to characterize items of discussion as pros or cons is unfair.

MR. SOUTHER: Right. I'll direct her not to answer any questions on that line.

Q Did you consider the potential recovery of $15 million to be a pro, a consideration in favor of any of these alternatives?

A I could not consider that a pro in light of the fact that I concluded that the claim could not be supported. It was irrelevant to my consideration.

Q Was it because you believed the claim was without merit that you reached that conclusion?

A I believe that the claim was without merit, and that to go through the alternatives would not be in the best interest of the Fundamental shareholders.

Q Would you have thought differently if you believed that the claim had merit?

MR. SOUTHER: That is hypothetical. I object to that.

MR. TERSIGNI: You may answer.

A That was a hypothetical -- is a hypothetical question without merit.

Q Counsel has already said that very ably. But my question to you, M'am, is if you have believed that it had merit, would your conclusion have been the same on January the 6th?

A I did not --

MR. SOUTHER: I object to the question.

THE WITNESS: I do not answer questions which are hypothetical and which do not present the facts as they exist.

MR. TERSIGNI: I have no further questions.

MR.POLLACK: Dr. Robichaud, I have some questions for you. I know that you have an appointment and we will attempt to be very brief.

EXAMINATION BY MR. POLLACK:

Q Did you have any business relationship or professional relationship with Mr. Haire prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Dr. Phillips prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Dr. Kemmerer prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Dr. Burks prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Burr prior to the time that you became a director of Fundamental

Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Chalker prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Wade prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Monroney prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Hutchinson prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Martin prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Hopkins prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mrs. O'Connor prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any contact with Mrs. O'Connor other than the fact that you worked with her as a fellow employee of IBM in the 1940's?

A Business or professional?

Q Yes.

A No.

MR. TERSIGNI: She's already told us about the social part.

Q Did you have any social relationship with any director of Fundamental Investors at any time prior to the time that you became a director of

Fundamental Investors, other than Mrs. O'Connor?

A No.

Q Was your social contact with Mrs. O'Connor limited to the four or five occasions over the 20-year period about which you testified previously?

A Yes.

Q Did you have any contact whatsoever with Mr. Wickers or with anyone else from Anchor Corporation regarding the deliberations of the disinterested quorum at any time between July 24, 1974 and January 22, 1975?

A No.

Q Did Mr. Haire or Mr. Wickers or anyone else from Anchor Corporation ever attempt to influence your deliberations as a member of the disinterested quorum?

A No.

Q To your knowledge, did Mr. Haire or anyone else from Anchor Corporation attempt to influence the deliberations of any other member of the disinterested quorum?

A No.

Q Did you feel under any pressure whatsoever from Mr. Haire, Mr. Wickers or anyone else from

Anchor Corporation in connection with your decision as a member of the disinterested quorum?

A No.

Q To your knowledge, did any other member of the disinterested quorum feel under any pressure whatsoever from Mr. Haire, Mr. Wickers or anyone else from Anchor Corporation in connection with his or her decision as a member of the disinterested quorum?

MR. TERSIGNI: Objection to the form of the question.

A No.

Q Did the Lasker action play any part in your decision to become a director of Fundamental Investors?

A It did not.

Q Did you ever discuss the Lasker action with anyone at any time prior to your becoming a member of the board of directors of Fundamental Investors?

A I did not.

Q Did you make your decision as a member of the disinterested quorum solely on the basis of what you felt was in the best interest of the shareholders of Fundamental Investors?

A Yes.

MR. POLLACK: Thank you, Dr. Robichaud.

MR. TERSIGNI: Do you have any cross, Mr. Souther?

MR. SOUTHER: I do not.

MR. TERSIGNI: I'd like to ask one or two more questions.

EXAMINATION BY MR. TERSIGNI:

Q Does McGraw Hill render any services to Anchor Corporation?

A I hope, and I know, that Anchor Corporation subscribes to Business Week, and I hope that they buy some of our books, and they probably subscribe to some of the Standard & Poors services. And that is the only relationship.

Q Do you have any knowledge of how much business McGraw Hill does with Anchor in terms of any dollar amount?

A I would say it would be insignificant. Maybe a couple of hundred dollars a year.

MR. TERSIGNI: I'm going to leave a blank here, and I would ask the witness and her counsel, when the deposition is executed, MR. FRIEDMAN: I have no questions.

(Time noted: 1:05 p.m.)

-oOo-

Benj. Robichaud

Subscribed and sworn to before me

this 28 day of March, 1976.

Florence G. Dwyer

FLORENCE G. DWYER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires October 9, 1977

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

---x

HOWARD M. LASKER, et ano., :

Plaintiffs, :

-against- :

HARRY G. BURNS, JR., et al., :

Defendants. :

---x

Deposition of MARY S. O'CONNOR, taken by the Plaintiffs, pursuant to decision by the Court, held at the offices of Messrs. Seward & Kissel, 63 Wall Street, New York, New York, on March 9, 1976, at 2:45 p.m., before David J. Feldman, a Certified Shorthand Reporter and Notary Public within and for the State of New York.

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oOo

MARY S. O'CONNOR,

called as a witness by the plaintiffs, having been first duly sworn by the Notary Public (David J. Feldman, C.S.R.) and stating her residence as One Dewitt Road, Elizabeth, New Jersey, was examined and testified as follows:

EXAMINATION BY MR. TERSIGNI:

Q Is it Mrs. O'Connor?

A Yes.

Q Mrs. O'Connor, when did you become a director of Fundamental Investors and the other Anchor funds?

A June 1972.

Q What were the circumstances under which you became a director?

A I was approached by Mr. Haire in a casual conversation, would I be interested in becoming a member of the Board of Directors of the mutual funds controlled by Anchor Corporation.

Q When did Mr. Haire approach you?

A Sometime in February 1972.

Q Was this a face-to-face meeting?

A Yes.

Q Where did that occur?

A At a friend's home in Elizabeth.

Q May I ask the name of the friend?

A Clemment Davidson.

Q Is that a mutual friend of both you and Mr. Haire?

A Yes.

Q How did you happen to be there and Mr. Haire be there at the same time?

A Just happened that they had some of their friends there and I happened to see the Haires there.

Q I take it this was a social function?

A Yes.

Q And during the course of that occasion, Mr. Haire made this inquiry of you?

A Yes.

Q Do you recall what he said?

A Yes.

Q What was it?

A I just told you. He asked me if I'd be interested.

Q Just that, or did he elaborate?

A No. ~~And he~~ I said I would be very interested to hear more about it. To be considered, that is, for a member of the Board.

And so he then went on and told about what would be involved, as I'd asked that, as ~~one of~~ to the duties of a director.

Q What did he say the duties would be?

A We didn't discuss ~~that~~ them generally. Just he mentioned the meetings at that point, and once a month. And he stated very specifically looking for a director ~~for~~ from the Elizabeth area to replace a director who ~~is~~ was leaving the Board that year.

They were looking for a woman, and they wanted to get one with business experience. And that's how my name happened to come to his attention.

Q Did he say whether he was suggesting your name or whether someone had suggested your name to him?

A He did not say specifically.

Q Did he mention the name of the director who would be leaving?

A Yes. Mr. Burks.

Q Did you know Mr. Burks?

A Yes.

Q How did you happen to know Mr. Burks?

A We happened to live in the same community.

Q Elizabeth?

A Yes. Or Hillside. They're -- they're next door to each other.

Q I see.

A The area.

Q And did Mr. Haire also live in Elizabeth?

A He lives in Hillside.

Q In Hillside?

A Yes.

Q I'm not sure whether you said whether you're in Elizabeth or Hillside.

A I live in Elizabeth.

Q So you were in the adjoining community to Mr. Haire and Mr. Burks?

A Yes.

Q What about Mr. Davidson, where did he live?

A He lived in Elizabeth.

Q How long had you known Mr. Davidson?

MR. SOUTHER: What's the relevancy of that?

MR. TERSIGNI: I want to know how long --

MR. SOUTHER: I don't think it really pertains to anything here. If there's a large gathering at somebody's house and she happens to see somebody.

MR. TERSIGNI: Do you direct her not to answer?

MR. SOUTHER: Sure.

Q How long had Mr. Haire known Mr. Davidson?

MR. SOUTHER: I direct her not to answer that, too. That's totally objectionable. Has nothing to do with the case.

Q Did you and Mr. Haire have any other friends in common?

A Yes.

Q How many?

A I have no idea.

MR. SOUTHER: What do you mean by "many"?

MR. TERSIGNI: So far you've directed her not to answer. I'm trying to --

MR. SOUTHER: My question is pretty simple. What do you mean by many. With Dr. Robichard you meant more than ten. Do you mean the same thing this afternoon as you did this morning?

MR. TERSIGNI: We can start with ten,

Mr. Souther, if you feel that will expedite things.

Q Did you have more than ten friends in common?

A I would say so.

Q Did you have more than 15 friends in common? You understand I'm doing this because of your lawyer's objection?

MR. SOUTHER: That's exactly right.

Q Did you have more than 15 in common?

A Yes.

Q Did you have more than 20 in common?

A Oh, that's hard to say.

Q Let's assume --

A Well, you're known in the community.

Q Would it be fair to say that you had quite a few friends in common?

A Yes.

Q Without my defining what quite a few means.

How long had you know Mr. Davidson?

MR. SOUTHER: Would you tell me what relevance that has?

MR. TERSIGNI: I'd like to know whether they had friends in common and whether entice your interest in Mr. Davidson, whose name we've all just heard for the first time.

MR. TERSIGNI: Well, I certainly only heard it for the first time.

Q How long had you know Dr. Burks? Was it Dr. Burks, by the way?

A Yes.

Q As of the time you had this conversation with Mr. Haire.

A I cannot recollect how many years.

Q Many years?

A Since I've been in Elizabeth.

Q How long had you been in Elizabeth, approximately, as of --

A Forty years.

Q Had you known Dr. Burks longer than Mr. Haire?

A Yes.

Q Could you approximate how long you'd known Mr. Haire?

A Not over ten years.

Q Pardon?

A Not over ten years.

Q Did you consider Dr. Burks a close friend of yours at this time?

A No.

Q How would you characterize whatever relationship there was between the two of you?

MR. SOUTHER: Which time, please, Mr. Tersigni?

MR. TERSIGNI: All these questions are as of the time Mr. Haire approached her about becoming a director.

A Would you say that again?

Q How would you characterize, how would you describe whatever relationship existed between you and Dr. Burks as of the time we're talking about?

A A casual friendship among people in the community.

Q Was it social and business?

A Social.

Q And how often would you have occasion to see Dr. Burks?

A Ten times during the year.

Q At what sort of function?

A Social functions.

Q Could you describe them more specifically than that?

A Concerts.

Q Concerts?

A Yes.

Q Civic functions?

A Civic functions.

Q Social functions at the homes of mutual friends?

A Sometimes.

Q Any other kind of function that you can think of?

A No.

Q Did you and Dr. Burks as of that time serve or had you served on any boards together?

A Never.

Q Had you been the members of any organization together?

A No.

Q Had you had any contacts with him other than the civic and social functions that you've already mentioned?

A What do you mean by that?

Q Anything at all.

MR. SOUTHER: Would you read the

question back?

MR. TERSIGNI: I think I said any other contacts with him other than what you've already described.

A No.

Q What about Mr. Haire, did you belong to any organizations with him or had you served on any boards with him?

A I never served -- I had not served on any boards with him at that time.

Q Did you ever serve on the Elizabeth Hospital board?

A Never. No.

Q The Pingry School?

A No.

Q I've asked you any other organizations. That would include things like parents' associations or any other civic groups and so forth, with respect to Mr. Haire, now.

MR. SOUTHER: You shook your head, but he can't get that so --

Q Were you shaking no? I think the witness was indicating no; is that right?

A No is right. No.

Q When Mr. Haire approached you early in 1972, did he explain to you that the directorship he was mentioning would be a directorship of all the Anchor funds?

A Yes.

Q Did you know how many that would be?

A More or less.

Q What was the number?

A Six or seven.

Q Did you know anyone who was a director of any of the Anchor funds at that time?

A Mr. Burks.

Q Other than Mr. Burks, I'm sorry.

A No.

Q And other than Mr. Haire, of course.

A ~~Yes~~. No. I knew only Mr. Burks and Mr. Haire.

Q Did you tell Mr. Haire on this first occasion that you would be interested in considering a directorship?

A Yes.

Q Did he tell you what the next step would be in that connection?

A He suggested that I come down to see him at the Anchor Corporation to discuss the matter further. At a later date.

Q Did you do that?

A Yes.

Q When?

A Sometime in March.

Q You went to Anchor's offices and met with Mr. Haire?

A Yes.

Q Anybody else present?

A No.

Q Was there a discussion at that time?

A Yes.

Q What was said by Mr. Haire and by you?

A We reviewed what was involved in becoming a director. We reviewed the setup of the funds and the relationship to Anchor Corporation. And with Washington National. And the total picture of the fund picture and the Anchor Corporation, and the director's responsibilities.

Q What did Mr. Haire say about Washington National?

A Just that ~~it was the~~ -- Anchor Corporation was ~~a holding company~~ -- ~~er~~, a subsidiary, ~~rather~~, of Washington National.

Q What did Mr. Haire say on the subject of director responsibilities?

A He said the responsibility involved selecting the investment advisor for the funds, and ~~to serve the~~ -- to monitor the progress of the funds, the performance of the investments, and all in the best interests for the shareholders.

Q Had you previously served as a director of any corporation?

A Not of a corporation.

Q Any other entity?

A Of a bank.

Q Which bank?

A Central Home Trust Company, Elizabeth, New Jersey.

Q Had you previously had any experience with respect to the mutual fund industry?

A No.

Q Other than what Mr. Haire told you, did you have any knowledge of what the function of an investment advisor to a mutual fund was?

A Yes.

Q What did you understand?

A From what I read in the proxy.

Q What proxy?

A Of the Anchor Income.

Q Was this --

A Of the prospectus.

Q Was this a prospectus that Mr. Haire gave you?

A No.

Q How did you obtain that?

A I happened to have been a shareholder of Anchor Income at the time.

Q Other than what was in that prospectus and what Mr. Haire told you, did you have any other experience or knowledge with respect to mutual funds, the function of advisors and of directors in such funds?

A No.

Q Does Mr. Haire or anyone related to Anchor serve on the Central Home Trust Company of Elizabeth board?

A No.

Q Or did they at any time, to your knowledge?

A Not to my knowledge.

Q What, if anything, did you say at this meeting at the offices of Anchor with Mr. Haire, that you've been telling us about?

A I said I was very much interested in business and finance. And having been a shareholder of some mutual funds, including Anchor Income, I was acquainted with what they were all about.

I asked about -- we discussed the meetings and the bank relationship with the First -- with the bank that Anchor uses in Jersey City.

Q Which bank is that?

A First ~~National Jersey~~. Jersey National.

Q What was said on the subject of the relationship between Anchor and that bank?

A I don't recall specifically.

Q In general?

A It was general conversation. They handled all the banking arrangements for Anchor.

Q Do you have any connection with that bank?

A No.

Q Does that bank have any connections with the bank on which --

A No.

MR. SOUTHER: Do you want to finish your question, the bank on which she serves as a director?

MR. TERSIGNI: That was my question.

A No.

MR. SOUTHER: And your answer is no?

THE WITNESS: No.

MR. SOUTHER: Your answer is no?

THE WITNESS: My answer is no.

Q Do you know what services First National Jersey furnishes to Anchor?

A Yes.

Q In general what kind of services are they?

MR. SOUTHER: Could you tell me what the relevance of that is, since there's no connection between the bank on whose board Mrs. O'Connor sits and that bank?

MR. TERSIGNI: Let's get the answer first and --

MR. SOUTHER: Could you, please, tell me where we're going?

MR. TERSIGNI: I don't think I'm required to do that. You know, every time I ask a question I have to tell you the relevance and the witness the relevance.

MR. SOUTHER: The point is we want to finish today and --

MR. TERSIGNI: We'll finish sooner by not discussing relevance and just getting testimony.

MR. SOUTHER: We might finish sooner if we just focus on the important questions.

MR. TERSIGNI: This is important in my opinion, otherwise, I wouldn't ask it.

MR. SOUTHER: I wish it were always the case, Mr. Tersigni.

MR. TERSIGNI: I assume you want the question reread now?

MR. SOUTHER: Please.

MR. TERSIGNI: Or do you remember?

MR. SOUTHER: No. I'd like it reread.

(The pending question was read.)

A The bank handles all the -- keeps all the stock certicates of the Anchor funds. It takes care of the shareholder relations as far as correspondence goes; it takes care of getting the dividends out to the shareholders, and takes care of all the monetary things that pertain to banking for Anchor.

Q Is Central Home Trust Company of Elizabeth equipped to furnish such services?

A No.

Q Does Anchor maintain any deposits with First National Jersey?

A First N~~ational Jersey?~~ Jersey National

Q Yes. The bank that you mentioned a few minutes ago.

A Yes.

Q Is that a commercial bank?

A Yes.

Q What about Central Home Trust Company of Elizabeth, what kind of a bank is that?

A A commerical bank.

Q Do you know how large the deposits maintained by Anchor with First National Jersey are?

MR. SOUTHER: I object to the question. Unless you're going to give us some enlightenment as to the relevance of what funds Anchor Corporation may keep in some other commercial bank which has nothing to do with this witness, I'm going to direct her not to answer.

Q Mrs. O'Connor, do you hold any position with Central Home Trust other than as director?

A Just as member of the committees.

Q What committees?

A The Executive Committee and the Trust Committee.

Q As a member of those committees and as a director, is business development one of your concerns?

A Surely.

Q And do you try to spend portions of your time in endeavors that might produce business for the bank?

A What do you mean by portions of my time?

Q Do you devote any parts of your time to activities which might be business producing for the bank?

MR. SOUTHER: I object.

A No.

MR. SOUTHER: All right. You've got the answer. Let's move on, please, to something which pertains to --

MR. TERSIGNI: Was the answer no?

THE WITNESS: Yes. No was the answer.

Q What reasons did you have for wanting to be a director of the various funds in the Anchor group?

MR. SOUTHER: I object to the form of the question.

You may answer it.

MR. TERSIGNI: What's the objection, that assumes she had reasons?

MR. SOUTHER: Yes.

Q Did you have reasons for wanting to be a director of the funds in the Anchor group?

A Because of my interest --

Q Well, just, did you have reasons?

A Yes.

Q What were those reasons?

A Because of my interest in business and finance, and I believe that I could contribute to the funds as a member of the Board of Directors with my background and business experience.

Q Had you considered a directorship on any other commerical enterprise other than this fund?

A No.

Q Were you particularly interested in serving as a director of mutual funds as opposed to other business enterprises?

A No.

Q Did you believe that you had particular expertise to serve as a director of a mutual fund, as opposed to some other business enterprise?

MR. SOUTHER: I object to the form of that question. It assumes that there is some particular expertise required to serve on a mutual fund board as opposed to serving on the board of a bank or some other financial or general corporate business.

MR. TERSIGNI: You may answer.

A Would you state the question again, please?

Q The question is: Did you believe that you had some particular expertise or qualification for serving as a director of a mutual fund as opposed to some other business enterprise?

A No.

Q Did you ask Mr. Haire whether the position of a director was compensated?

A No.

Q Did he tell you whether there was compensation?

A Yes.

Q Did that have any part in your decision?

A No.

Q What did he tell you the compensation was?

A There would be directors' fees for attendance at meetings, and serving on certain committees, And there would be a retainer fee, a salary in addition.

Q What was the retainer fee or salary that you referred to?

A $4,800 a year.

Q And what was that for?

A For the services rendered as a director.

Q You received a salary retainer of 4,800?

A Yes.

Q Plus fees, director fees?

A For each meeting attended.

Q Mrs. O'Connor, I show you Plaintiff's Exhibit 8 which has been marked for identification. This is a schedule which has been furnished to us by Mr. Souther, and it indicates that fc the calendar year 1974 you were paid, I assume, regular fees of $9,475. Did that include the retainer?

A Yes.

Q What relation did the retainer have to those fees?

MR. SOUTHER: I object to the form of the question.

Q As I understand your testimony, you said you were paid a retainer or salary of $4,800 plus director fees; is that correct?

A Plus attendance at directors -- plus attendance at the directors' meetings.

Q How much would you be paid for attending directors' meetings? What's the fee?

A It's just been changed. I believe it's $~~450~~ 475 per meeting.

Q When you attend a meeting, you attend a meeting of all the funds on one day?

A Yes. All funds on one day.

Q And do you get a fee for each fund for which you serve as a director?

A You get one check covering whatever it is. It's broken down. I think that's on the record.

Q How many meetings a year do you attend?

A Eleven meetings a year.

Q And every time you attend those meetings, which are for all the funds, you get one check for $450; is that correct?

A Yes.

Q That's $4,950, according to my mathematics.

And then you also are paid fees for service on committees?

A When the committees meet.

Q Do you know what this $9,475 shown for '74, on Exhibit 8, consists of other than fees for attending meetings?

A I told you the retainer salary.

Q The retainer, which was $4,800.

That's 9,750, according to my math, but that may be after the fee was increased.

A In '74 it was not 450.

Q It was somewhat less?

A Yes.

MR. TERSIGNI: I'm going to renew my request, as I've already made it, for supplementation of this exhibit. And not only for the years shown here, but for prior years.

Q As of the time you were considering becoming a director, were you acquainted with Mr. Burr?

A No.

Q Mr. Chalker?

A No.

Q Mr. Hopkins?

A No.

Q Mr. Hutchinson?

A No.

Q Mr. Kemmerer?

A No.

Q Mr. Monroney?

A No.

Q Mr. Phillips?

A No.

Q Mr. Wade?

A No.

Q Any other employee of Anchor Corporation?

A No.

Q When you were talking to Mr. Haire about the possibility of your becoming a director did he tell you there was a Director Qualification Committee?

A I don't recall.

Q Did he tell you that at the last annual meeting one of the shareholders had asked why they don't have a lady on the board?

A I don't recall.

Q Did he ever tell you that your qualifications would be reviewed by a Director Qualification Committee?

A He said they had been reviewed.

Q Didn't he tell you that Dr. Burks, whom you'd known for 40 years or so, and he, Mr. Haire, and Mr. Phillips, were the Qualification Committee that would be passing on your qualifications and making a recommendation to the board?

MR. SOUTHER: Object to the form of the question.

A Not that I recollect.

Q Do you know today that those gentlemen did, in fact, comprise the Qualification Committee which, in fact, reviewed your qualifications and made a recommendation to the board?

A So I've since learned.

Q When did you learn that?

A Would you, please, repeat that question?

MR. TERSIGNI: Yes.

Read it back, please.

(The pending question was read.)

A In general discussion.

Q With whom?

A I told you that I was not aware that there was a Directors Qualifications Committee.

Q Yes, Madam, you said that.

A I've said that, and I'll stick by that. And I was told that Mr. Burks would support, or would be interested in my name being put before the board as consideration to be a member of the board.

I knew of no Directors Qualification Committee as such.

Q I believe you've also said that there did come a time when you learned that there was such a committee consisting of Messrs. Burks, Phillips and Haire, and that that committee had reviewed your qualifications and made a recommendation.

A No, I never knew of that committee.

Q Right up to today?

A Up to this week when I heard th~~at there was one.~~ of that Committee. I didn't know of a Directors Qualification Committee until I had served on the board of Anchor. Of the mutual funds.

sequence of questions and answers so it's clear in context.

MR. TERSIGNI: It's very clear.

Read the last question.

(The last question was read.)

Q I believe the reporter read, in substance, up to this week I heard that there was one.

I would like you, Mrs. O'Connor, if you would, to explain what you meant when you gave that testimony a couple of questions ago.

A In reviewing the data, I learned this week that Mr. Phillips had been a member of the committee, which thing I had never known.

Q Had you known that Mr. Haire and Mr. Burks had been a member of the committee?

A I had not known there was a committee at the time my name was being proposed, I told you that.

Q You said within the last week you learned that Mr. Phillips was a member of the committee. Is that correct, Madam?

A That I learned ~~they, all were a member of~~ and that all three were members of the committee.

Q So prior to approximately a week ago, you didn't know that there was a committee, or that these gentlemen were on it?

MR. SOUTHER: I object to that. It's totally unfair. The witness has told you twice that she learned there was a Directors Qualification Committee after she become a director of the fund. That was part of the answer we had read back. But you didn't listen to it.

Q Was it the identity of the members that you learned a week ago?

MR. POLLACK: I believe the question was answered as to what she learned a week ago.

A I learned a week ago that there -- pardon me, would you strike that out.

I told you at the time ~~I was~~ -- my name was up for consideration I did not know of a Directors Qualification Committee per se.

Q You've said that, Ma'am.

A Yes.

Q I understand that.

A I'm glad you do.

I also did not know who comprised ~~that~~ the committee until

I was checking some records this week.

Q So as I understand your testimony, when you became a director you became aware that there was such a thing as a Director Qualification Committee, but you didn't know who was on it?

A That's right.

Q Is that right?

A That is right.

Q And a week ago you found out that your particular qualifications had been reviewed by Messrs. Burks, Phillips and Haire?

A That's right.

Q Is that accurate?

A That's accurate.

Q What records were you reviewing when you found out that it was Burks, Phillips and Haire that had reviewed your qualifications?

A It was in general discussion.

Q Were you reviewing records or --

A No, I did not review records.

Q Was it a discussion with your lawyer or --

A Yes.

Q Mrs. O'Connor, when you acted as one of the so-called disinterested quorum and gave consideration to whether the Lasker case ought to proceed against Mr. Haire and Mr. Burks and Mr. Phillips, you were not aware, were you, that they had reviewed your qualifications and recommended you for a directorship?

A I was aware that Mr. -- that all the board reviewed my qualifications, as I understood it. After all, they all had to vote upon it to put my name before the total number of shareholders.

Q It was your understanding that the whole board, including these gentlemen, had approved you for a directorship?

A Yes.

Q But you did not know that those three gentlemen, as the members of the Qualification Committee, had recommended you to the board --

A No.

Q -- for a directorship?

A No.

Q That's what you found out a week ago?

A Yes.

Q Mrs. O'Connor, when did you first learn about the Lasker suit?

A At the February 1973 board meeting.

Q Was there a discussion of the Lasker suit at that board meeting?

A Just an announcement that it was on the records.

Q That's all that was said?

A Yes. And certain directors had been served.

Q Were you told who the defendants in the case were?

A Yes.

Q And you found out at that time that Mr. Haire was a defendant?

A Yes.

Q And Mr. Burks?

A Yes.

Q And Mr. Phillips?

A Yes.

Q And the others named in the complaint?

A Yes.

Q Was there any further discussions with respect to what objection, if any, the funds should take at that time with respect to the case?

A Not at that time.

Q Was Mr. Haire present at this meeting?

A Yes.

Q When is the next time that the Lasker action was discussed at a board meeting that you attended, and which Mr. Haire attended?

MR. SOUTHER: If you can remember that.

A I was going to say my recollection is a bit hazy as to the specific board meeting.

Q Well, you recalled the February 1973 board meeting, do you not?

A Yes.

Q You have a clear recollection of that, do you not?

A I have a recollection of that.

Q And my question is: Subsequent to that --

A I stated --

Q -- when is the next time that you can recall?

A I stated I have a hazy recollection.

Q Do you recall that there came a next time when the Lasker action was discussed at a board meeting at which you and Mr. Haire were present, regardless of when the date may have been?

A I have a recollection.

Q And what was the occasion for that discussion?

A To have a motion to stay the proceedings of the Lasker case until the Goldman, Sachs suit had been put to trial.

Q Did someone make that suggestion?

A Yes.

Q Who made that suggestion?

A I cannot recollect.

Q Was it Mr. Haire?

A I cannot recollect.

Q I'm trying to --

A I know you are, but I cannot recollect.

Q I'm mentioning names --

MR. SOUTHER: Could you, please, tell me what the relevance of the inquiry is as to the decision of the board to seek to stay the Lasker action until the outcome of the Goldman, Sachs trial, and how that pertains in any way to the narrow inquiry the judge is permitting, namely, the relationship between the five independent disinterested directors, and the Directors Qualifications Committee?

MR. TERSIGNI: Mr. Haire was one of

question.

Direct the witness not to answer.

Q Did you vote in favor of that proposal?

MR. SOUTHER: Same objection. Same direction.

Q Did Mr. Haire vote on that proposal?

MR. SOUTHER: Same objection. Same direction.

Q Did Mr. Haire state any reason why the lawsuit against him should be stayed?

MR. SOUTHER: Same direction. Same objection.

Q Did Mr. Wicker state any reason why the lawsuit against him should be stayed?

MR. SOUTHER: Same objection. Same direction.

Q Did you believe that it was in the best interest of the fund that that action should be stayed?

A Yes.

Q Why?

A So that we could find out the outcome of the Goldman, Sachs suit.

Q Did you confer with anybody prior to

reaching that conclusion?

A No.

Q You didn't talk to any of the other directors?(

A No.

Q You didn't discuss it at a board meeting with any other directors?

MR. SOUTHER: Object to the form of the question.

Q Was it discussed at a board meeting with any of the other directors?

MR. SOUTHER: Object to the question.

The witness is directed not to answer.

MR. POLLACK: I object to the question.

Q When you voted in favor of staying the Lasker action against Mr. Haire and Anchor and the other defendants in 1973, did you know at that time that you would be asked as one of five so-called disinterested directors to ultimately decide what action the funds should take with respect to that lawsuit?

A No.

MR. SOUTHER: I'm not going to reply to that.

MR. TERSIGNI: I'm thankful.

Read back the question, please.

MR. SOUTHER: Please read back the last two questions.

(The requested portion of the record was read.)

A I don't think those are complete. Would you, please, state it more clearly?

Q Did there come a time when it was requested of you that you serve as one of five disinterested directors to make a decision with respect to the Lasker case?

MR. SOUTHER: I object to the question.

MR. TERSIGNI: You may answer.

A I don't recollect.

Q Did you ever serve as one of five so-called disinterested directors to make a decision on behalf of the fund with respect to the Lasker action?

A Yes.

Q Were you requested to do so?

A Yes.

Q Who requested of you that you do so?

A At a later date, when the Lasker case was reviewed, it was up to the five directors not on the board at the time of the Lasker suit to review the total case, and to decide on what action to take.

Q My question, Mrs. O'Connor is: Who made the request of you?

A It was the result of a general discussion that we were considered to act as the board representing the fund as far as the Lasker case went.

Q Was it Mr. Kendall who made the request of you?

MR. SOUTHER: Object to the form of the question. The witness has just said it was as the result of a discussion.

Q Who first raised the subject for discussion?

A It was a general discussion of the whole board.

Q Including Mr. Haire?

A He's part of the board.

Q And did he participate in the discussion?

A I don't recollect.

Q Who do you recollect that did participate in the discussion?

A All the board members. Specifically, I can't say who said what.

Q Do you recall that it was all the board members that particpated in the discussion as opposed to --

A It is my recollection.

Q --only the five of you?

A It is my recollection the whole board discussed this situation.

Q Do you recall what was said, in substance?

A I don't recall exactly what was said.

Q I'm not asking exactly, and I understand you may not be able to attribute specific words to specific persons. But I'm asking you, in substance, what do you remember being said on this subject.

A I don't recollect clearly at this time.

You know, I'd just like to have a little break. Could I?

MR. TERSIGNI: Yes. Sure.

(A short recess was taken.)

Q Do you remember Mr. Wickers being present at this meeting?

A Yes.

Q And do you remember his making a presentation on this subject?

MR. SOUTHER: Object to the form of the question.

Q Do you remember his making any statements on this subject?

A He just reported to the group.

Q What do you recall that Mr. Wickers said?

A He ~~said that he~~ reported at that meeting that the Goldman, Sachs case had been settled, and the next order would be that the staying of the ~~motion with the~~ Lasker case would be expiring, and discussion should ensue as to what should happen next.

Q Do you recall anyone else saying anything on the subject?

A It was just general discussion with everybody. No specifics.

Q Did you say anything?

A It's my recollection I put my two cents in.

Q Do you recall what you said?

A No, I do not recollect.

Q Do you recall Mr. Wickers saying anything about Judge Fuld?

A Not at this stage of the game.

Q What, if anything, was decided at this board meeting in July of 1974 with respect to what action, if any, should be taken by the five so-called disinterested directors?

A First there was general discussion ~~on~~ by the board in total as to ~~what action~~ -- what action should take place. And then since there were five disinterested directors on the board present, who had not been involved in the Lasker case, through the discussion of all, it was determined, since these five independent directors really were a quorum, and it was a general consensus that they should look into the situation of the Lasker case.

Q When you say it was a general consensus, are you referring to the entire board?

A Yes.

Q Including Mr. Haire and --

A He's part of the board.

Q Do you know who selected Judge Fuld?

A It was a consensus of the five independent directors.

Q Who suggested Judge Fuld's name?

A His name was presented and put on the table before the whole group.

Q By Mr. Wickers?

A Mr. Wickers was presenting it.

Q Any other names suggested?

A I believe there is another name.

Q Do you recall it?

A A Seymour North.--I can't remember his name. ~~I think you know who I mean~~.

MR. SOUTHER: Off the record.

(Discussion off the record.)

Q Did Mr. Wickers say that he had checked with Judge Fuld and Judge Fuld was available?

A It's my recollection that he did.

Q Did he say that he had checked with Mr. Seymour and that Mr. Seymour was available?

A I don't recollect.

Q Was there any discussion whether Judge Fuld should be retained or whether Mr. Seymour should be retained?

A There was general discussion.

Q Did anybody speak in favor of retaining Mr. Seymour as opposed to Judge Fuld?

A The consensus was that since Judge Fuld said he would be willing to take on ~~over~~ the case and was available, and with his qualifications, he seemed the more likely person to handle the case.

Q Did Mr. Wickers make a recommendation to the five directors?

A No.

Q Did anybody else make a recommendation?

A No.

Q What instructions were given to Judge Fuld?

MR. SOUTHER: Object to the form of the question.

MR. TERSIGNI: If any.

Q What instructions, if any, were given to Judge Fuld?

A First he was to be approached to see if he'd be willing to serve, or if he would -- he said he would be willing to serve and that he would be available.

And the instructions would be that the independent directors, this quorum, would like to have him review and analyze the facts of the legal aspects connected with the Lasker case, and that's it.

Q Were the instructions communicated to Judge Fuld through Mr. Wickers?

A Yes.

Q Do you recall Judge Fuld telling the five of you that you should make your decision independently?

A Decision for what?

Q The decision that the five of you were going to make with respect to the Lasker action.

A Yes.

Q Did you understand what he meant by independently?

A Yes.

Q What did you understand?

A Two ways. One, make ~~sure~~ our own independent judgment regardless of the other five. And also the five to make their ~~there~~ -- ~~make your~~ independent judgment regardless of all other directors on the board.

Q That would include Mr. Haire?

A He's a member of the board, yes.

Q And you should decide independently of Anchor, for example?

A Yes.

Q Did you know that Mr. Wickers was affiliate with Anchor?

A Yes.

Q Did you know that he was a subordinate of Mr. Haire at Anchor?

A Yes.

Q And did you feel that using him as an intermediary with Judge Fuld was consistent with your independence?

A Yes.

Q Why?

A As secretary of the board of the fund, it was -- he was carrying out his line of duty to take directions from us in this instance.

Q He also reported to Mr. Haire, did he not?

A This was a fund matter.

Q I understand that. But he also reported to Mr. Haire as an employee of Anchor; did he not?

A Yes.

Q And Mr. Haire, while the chief executive office of Anchor, was also president of the fund; was he not?

A Yes.

Q And you would not have considered using Mr. Haire as an intermediary, would you?

MR. SOUTHER: I object to the form

of the question.

Q Would you?

A It was Mr. Wicker's job to do it, as secretary.

Q You would not have considered using Mr. Haire for this purpose, would you?

A No.

Q But you felt it was proper to use Mr. Wickers, his subordinate?

A As secretary.

Q Were you privy to any of the discussions that Mr. Wickers had with Judge Fuld?

A No.

Q As part of his investigation, do you know whether Judge Fuld requested any files of Anchor Corporation?

A It's my recollection that he did.

Q Do you know who assembled those files and conveyed them to Judge Fuld?

A No.

Q Was it Mr. Wickers?

A I don't know.

Q Wasn't it of concern to you as one of the five disinterested directors that someone impartial should accumulate these files and convey them to the judge?

MR. SOUTHER: Object to the question.

MR. TERSIGNI: You may answer.

A It was -- if Mr. Wickers did it, someone had to do it and it would come under his category as one of his duties as secretary, or whoever furnished it.

Q Did you know that one of the things Judge Fuld was considering was whether Anchor and Mr. Haire and the other defendants had been negligent?

MR. SOUTHER: I object to that question.

MR. TERSIGNI: You may answer.

MR. POLLACK: I object to the form of the question.

MR. TERSIGNI: You may still answer.

A Would you like to repeat that?

MR. TERSIGNI: Yes.

Q Did you know that one of the questions that Judge Fuld was reviewing was whether or not Mr. Haire, Anchor and the other defendants had been negligent?

MR. SOUTHER: Do you mean after Judge Fuld had gone off to start his researching inquiry, did she know, or after he had concluded it?

MR. TERSIGNI: While it was ongoing.

A I don't think you're clear.

Q Did you understand as one of the five so-called disinterested directors that Judge Fuld was being asked to express an opinion as to whether or not Mr. Haire, Anchor or the other defendants had been guilty of misconduct?

MR. SOUTHER: I object to the question.

A Judge Fuld's job was to analyze the facts and to present us with an analysis of the total situation.

Q But my question, Mrs. O'Connor, is: Did you understand that part of that analysis would be an expression of his opinion as to whether or not Anchor, Mr. Haire or the other defendants, had been guilty of misconduct?

MR. SOUTHER: I object to the form of the question.

THE WITNESS: Can I object?

MR. SOUTHER: No.

THE WITNESS: Sorry.

MR. SOUTHER: If you don't understand it, that's perfectly okay. You can say so.

THE WITNESS: I don't. I just think -- I don't understand it.

MR. TERSIGNI: Let me see if I can simplify it.

Q Was it your understanding that part of Judge Fuld's task would be to express an opinion as to whether Mr. Haire had done anything wrong or illegal with respect to the Penn Central transaction?

A His main function was not that. It was to ~~oversee~~ give us an overview of the whole situation.

Q Was that one of the things he was asked to do?

A Not specifically.

Q Was it one of the things he did do?

MR. SOUTHER: Are you asking about two long, written reports that the man has given, and which you've had possession of for six months or a year?

MR. TERSIGNI: I don't recall saying anything about any reports.

A The answers are given in the two reports.

Q I'd like your understanding. I can read the reports as well as Mr. Souther can, but I'd like your understanding as one of the directors involved.

Could you give me your understanding, whether that was one of the things he was to do?

A He was to look in to see if Anchor, or any of the board of directors, had not carried out their charge, to the best of their ability.

Q And were you aware that as part of that analysis, he had requested that files of Anchor be delivered to him for review?

MR. SOUTHER: Excuse me. Do you mean aware during the time that it happened, or did she become aware thereafter?

MR. TERSIGNI: While it was happening.

A Judge Fuld had access to the files during his study of the total picture of what had happened and the review of that analysis.

Q Did the five directors ever discuss designating someone unconnected with Anchor to insure that all of the files requested were delivered?

A In selecting Judge Fuld as an independent person, a special counsel would take care of that situation. He had no connection with Anchor. He would give an independent opinion and would look at it from an objective point of view.

Q Is the answer to my question no?

MR. SOUTHER: No. Don't answer that kind of question.

MR. TERSIGNI: I'd like you to answer my question.

A You tell me your question again, then.

Q My question is: Did any of the five directors ever discuss the advisability or necessity for designating a person unconnected with Anchor to insure that all of the Anchor files requested by the Judge were delivered to the judge?

MR. POLLACK: Object to the form of the question and the premise and the notion that somebody who was "connected with Anchor" could not deliver all of the files Judge Fuld requested.

I think there is an insinuation in the question which, on behalf of my clients

(The pending question was read.)

A Not that I recollect.

Q Do you recall receiving Judge Fuld's initial report?

A Yes.

Q Do you recall when you received it?

A In early December.

Q Do you recall a meeting of the quorum in December?

A Yes.

Q How did that meeting come to be scheduled?

A Judge Fuld was reviewing his opinion, or analysis with the group.

Q Who arranged the meeting?

A It was at the time a regular directors' meeting. I presume Mr. Wickers. Part of his job.

MR. SOUTHER: Don't presume.

THE WITNESS: All right.

Q How many times did you read Judge Fuld's initial report prior to the December 18th meeting, approximately?

A I don't recollect.

Q Did you read it more than once?

A Certainly.

Q More than five times?

A I don't recollect.

Q Did you understand it?

A Yes.

Q Did you have any questions about it?

A Yes.

Q Did you have questions about matters in the report that you felt were important?

A Certainly.

Q And that you would require answers to before you could make a decision as one of the five quorum?

A Yes.

Q How many questions, approximately, did you have?

A I don't recollect.

Q Were there many or just a few?

A I don't recollect.

Q Did you jot them down?

A At the time.

Q What, if anything, did you do with respect to obtaining answers to your questions?

A Came out in general discussion.

Q At the December 18th meeting --

A Yes.

Q -- to whom did you address the questions?

A Judge Fuld.

Q Prior to that meeting, and after jotting the questions down, did you discuss the questions with anybody else? With Mr. Souther, for example?

A They were brought up -- all questions were brought out for discussion. At least, all of my questions were brought out for discussion at the time of that meeting with Judge Fuld.

Q I understand you've said that. What I'm asking you is after you jotted the questions down and before the meeting of the 18th when they were discussed, did you have any prior discussion --

A No.

Q -- with anybody else, like Mr. Souther?

A No.

Q So you just brought the questions to the meeting and voiced them for the first time there?

A Yes.

Q What questions did you have?

A I don't recall specifically.

Q Generally?

A I don't recall.

Q Do you have any recollection of any kind about what was unclear to you about the Judge's report?

A It was a very clear report.

Q But you did have questions?

A Naturally.

Q And it was important to you to have answers in order to make a decision?

A Yes.

Q And you asked the questions at the meeting; correct?

A Yes.

Q And you obtained answers?

A Yes.

Q Do you have any recollection at all of any kind what the questions were and what answers you were given?

A No recollection. My recollection is hazy at this time.

Q Do you remember any questions raised by any other of the --

A It was all general discussion.

Q Do you remember any other questions raised by any of the other quorum directors at this meeting?

A Oh, there were just general questions about wanting to know about more of the -- going into the facts. I can't say specifically.

Q After Judge Fuld's December 5th report, did he submit a supplemental report under cover of December 18th?

A Yes.

Q That was the same date as the meeting; was it not?

A Yes. Yes.

Q Do you recall reviewing that supplemental report?

A Yes.

Q Did you review it prior to the meeting?

A No.

Q At the meeting?

A Yes.

Q Did you understand that?

A Yes.

Q Did you have any questions about that supplemental report?

A I don't recall.

Q You testified that you jotted the questions you had down and that you brought those notes to the meeting and put your questions; is that correct?

A Yes.

Q Do you have those notes?

A No.

Q What did you do with them?

A Discarded them.

Q Was it one or more pages of notes that you had?

A I don't recall.

Q Was Mr. Haire present at the December 18th meeting?

A Yes.

Q Do you recall at or about the beginning of the meeting Judge Fuld giving an oral report to the quorum concerning his conclusions?

A He wasn't present at the beginning of the meeting.

Q I said at or about the beginning.

MR. SOUTHER: And she answered your question, that Judge Fuld was not present at the beginning of the meeting.

MR. TERSIGNI: I don't think that is responsive to my question.

MR. SOUTHER: I think it's directly

responsive to the question you've asked and it's quite clear in the minutes. Which you have.

Q The minutes indicate, Mrs. O'Connor, that the meeting convened at 2:30 p.m., and that at 3:10 p.m. a number of people, including Judge Fuld, where invited in. And that Mr. Kendall called upon Judge Fuld shortly thereafter to give an oral report.

A Yes.

Q Is that your recollection?

A Yes.

Q Is it also your recollection that when Judge Fuld gave his oral report, Mr. Haire was present in the room, together with Mr. Phillips, Mr. Kemmerer, who are three of the defendants in the case?

A Yes.

Q Do you know why they were present as Judge Fuld gave his report to the quorum?

A For the purpose of being able to answer questions which we had later.

Q Did you have any questions of Mr. Kemmerer?

A No.

Q Did you have any questions of Mr. Phillips?

A No.

Q Why were they present?

MR. SOUTHER: She just answered the question that these people were present to be able to answer questions that members of the five-person board might want to ask.

Q Did you ask any questions of Mr. Phillips, Mr. Kemmerer or Mr. Haire during the time that Judge Fuld was making his report to the quorum?

A No. Nobody interrupted Judge Fuld as he was making his report.

Q When did you question Mr. Haire, if ever?

A With regard to the --

MR. SOUTHER: The question is when.

A After the report.

Q But you felt that he should be present during the report?

A Yes.

Q Did you understand that Judge Fuld was giving legal advice to the five members of the quorum?

A He was ~~preparing~~ presenting facts and making an analysis.

Q Did you understand that he was advising you as a lawyer?

A He was reporting first and presenting alternatives, what action to take further.

Q I understand that. My question is did you understand that he was advising you as a lawyer?

MR. POLLACK: Object to the form of the question, and also on the grounds that in the sense in which you are asking it, it appears to call for a legal conclusion.

MR. TERSIGNI: You may answer.

Let me rephrase it.

Q Was it your understanding that as he made this presentation to you and explained the alternatives that were open to you, and how you should make your decision, and that you should be independent of Mr. Haire and so on and so forth, that he was acting as your lawyer?

A He was engaged to submit the analytical report and study the law and present possible alternatives to take upon the conclusion of his report.

Q I understand all that, Mrs. O'Connor. My question is very specific.

Did you understand that in making this report to you, he was acting as a lawyer giving advice to a client?

A He was presenting the case. It was up to us to decide what to do.

Q I understand that. Did you have an understanding as to whether he was giving you legal advice?

A He was using his legal abilities on our behalf.

Q Did you understand that he was giving you legal advice?

MR. SOUTHER: I object to the form of the question.

MR. FRIEDMAN: I object to the question. It's obvious, isn't it, that you and the witness are on different wave lengths as you keep repeating this phrase "legal advice".

The witness has explained very fully what she thought he was doing, and I don't see how the record could be made any fuller by the repetition of the same question.

MR. TERSIGNI: Are you directing her not to answer that?

MR. SOUTHER: No.

MR. TERSIGNI: Please answer.

MR. SOUTHER: One more time.

When I say that, it doesn't mean you have to change your answer or embellish it, if you're satisfied with your other answer. Answer the question as best you can, if you haven't already.

A I'm satisfied with my answer.

Q Did Judge Fuld say to you during this presentation that you should make your decision independently?

A Yes.

Q Independently of Mr. Haire?

A Independently as an independent director of the quorum group.

Q And you understood that that meant independently of Mr. Haire and of Anchor and all the other defendants; correct?

A Correct.

Q Independently of Mr. Kemmerer and Mr. Phillips?

A An independent judgment.

Q And as Judge Fuld said that, Mr. Haire, Mr. Phillips and Mr. Kemmerer were sitting there, were they not?

MR. SOUTHER: I object to that.

It's already been established several times they were sitting there.

Q Did you, as a member of the quorum, feel that it was appropriate to have these three defendants sitting in the room --

A Yes.

Q -- as you were receiving that advice?

A Yes.

MR. SOUTHER: Mr. Tersigni, you've asked that question twice, and twice the witness has said yes. Would you, please, move on to something else?

MR. TERSIGNI: I haven't asked that question twice.

MR. SOUTHER: Yes, sir.

MR. TERSIGNI: No, I haven't.

MR. SOUTHER: Well, the record will bear me out.

MR. SOUTHER: You'll find, if you went back on the record, you'll find the question I asked before was different.

MR. SOUTHER: All right.

MR. TERSIGNI: You're doing nothing but holding things up.

MR. SOUTHER: The record will show whatever is right.

MR. TERSIGNI: Yes, it will.

Q When was the next meeting of the quorum held, Mrs. O'Connor?

A January 6th.

Q You weren't present at that meeting?

A No.

Q You knew a vote would be taken at that meeting?

A Yes.

Q And did you ask Mr. Kendall to communicate your decision and cast your ballot, as it were --

A Yes.

Q -- on your behalf?

A Yes.

Q When did you so request that of Mr. Kendall?

A Before I left. December 21st, Sunday.

Q When did you form your decision in your own mind?

A Between December 18th and December 21st.

Q Did you call Mr. Kendall or did he call you?

A I called Mr. Kendall.

Q What did you say to him and what did he say to you?

A I talked to him and told him I had given the matter due consideration. I had reread the material. I had considered the alternatives, and after due thought and careful consideration, I wished him to see that my vote was cast for having the case dismissed. This was because of the best interest of the shareholders of Fundamental.

My basis for this decision was that ~~since~~ Judge Fuld's opinion had brought out ~~that he felt~~ that Anchor and the director defendants were not guilty and that there was not merit in the case. And that was my decision.

Q Would you have reached the same decision if you thought that there was merit to the claim?

MR. SOUTHER: I object to the question. It's hypothetical.

MR. TERSIGNI: You may answer.

MR. FRIEDMAN: I object to the characterization of the word "merit".

Is the question would she have felt differently if the fund had a lock on $15 million?

MR. POLLACK: I object to the question.

MR. TERSIGNI: I didn't ask anything about any locks.

MR. FIREDMAN: I don't know what you mean by had merit.

MR. TERSIGNI: That was her word, not mine.

MR. POLLACK: I think the question you pose is a counterfactual hypothesis which no one can answer.

MR. TERSIGNI: Maybe she'll say she can't answer or maybe she'll surprise us all and give us an answer.

MR. SOUTHER: I'll direct her not to answer questions that are hypothetical.

THE WITNESS: I'll stick to my --

MR. SOUTHER: I've directed you not to answer so please don't say anything.

Q As you were mulling this matter over in your mind, did you give any consideration to what your conclusion might be if you thought the claim had merit?

A No.

Q After you left the meeting of December 18th, you knew already that you'd be leaving on the 21st; is that right?

A No.

Q You didn't know.

When did you find out that you'd be leaving on the 21st?

A I wasn't leaving on the 21st.

Q But you did leave on the 21st?

A No.

Q You talked to Kendall on the 21st?

A Yes.

Q And when did you leave?

A The 23rd.

Q Let's go back to the 18th. When you had the meeting of the 18th, did you know you'd be leaving on the 23rd?

A Yes.

Q Did you tell that to Mr. Kendall?

A Yes.

Q And did you ask him to call you in a few days --

A No.

Q -- to get your decision?

MR. FRIEDMAN: I'm sorry, I got confused here. Your question was did you tell that to Mr. Kendall. Was your question did she ever tell it to him, or did she tell it to him at the meeting of the 18th?

MR. TERSIGNI: I meant at the meeting of the 18th.

MR. FRIEDMAN: I see.

MR. TERSIGNI: I doubt very seriously that after the 23rd, certainly she'd be telling this to Kendall that she was leaving --

MR. FRIEDMAN: She may have told him on the 21st.

MR. TERSIGNI: She may have told it to him on the 19th, indeed, and I'm sure it couldn't matter less if --

Q When did you tell Mr. Kendall that you were going to be leaving, was it at the meeting of the 18th?

A Yes.

Q Did you have a reason for telling him that?

A Yes.

Q What was the reason?

A That I wouldn't be able to be present on

January 6th.

Q And did you discuss what alternative procedures should be followed in view of your upcoming absence?

A The question was regarding the vote.

Q Yes.

A That was my concern.

Q Did you discuss what you would do in view of the fact that you were going to leave?

A Yes.

Q What was the discussion?

A That I would give him my answer before I left.

Q Did you tell him you'd telephone him and discuss it with him?

A Yes.

Q Am I correct that your mind was not made up as of the 18th, the conclusion of the meeting of the 18th?

A ~~Not~~ - No.

MR. SOUTHER: When you say "no", you mean he's not correct or your mind wasn't made up?

THE WITNESS: My mind was not made up.

Q Did you have any particular doubts as of that time?

A I wanted to hear the full report and full discussion with the other people, and have all questions answered.

MR. SOUTHER: On the 18th?

THE WITNESS: On the 18th.

Q I'm asking you, at the end of the meeting on the 18th, after you'd heard the judge and --

A You didn't say at the end of the meeting.

Q That's what I mean.

At the end of the meeting of the 18th, was your mind made up?

A No.

Q What doubts did you have as of the end of the meeting, after you'd heard everything that transpired at the meeting?

MR. SOUTHER: I object to the question. There's no evidence she had any doubts.

MR. TERSIGNI: You may answer.

A I didn't have any doubts. I just needed time to reassess the total situation, to give it my deep thought for consideration.

Q Were there any particular aspects that you considered over the next day or so?

A The total aspect.

Q Nothing in particular?

A No. The whole thing.

Q Why did you believe that the alternative you voted for was in the best interest of the fund and its stockholders?

A I believed it was for the best interest of the stockholders because I didn't think the suit had merit and it, therefore, should not be prolonged.

Q Did you give any consideration to whether or not that should be determined in court rather than by Judge Fuld?

MR. SOUTHER: Object to that. There's no evidence that Judge Fuld determined it. As a matter of fact, the evidence is to the contrary, that the five directors determined it.

MR. POLLACK: I object to that.

Q You determined the suit had no merit; is that correct?

MR. SOUTHER: That's not what the witness said.

Q Did you?

A No, I did not determine that.

Q Did you believe it had merit?

A No, I did not believe it had merit.

Q Did you believe it didn't have merit?

A I believed it was without merit.

Q I'm sorry. You believed it was without merit?

A That's right.

Q And did you believe that on the basis of the report of Judge Fuld?

A After his analysis.

Q Did you give any consideration to whether that determination should be made in court, with a judge and a jury, with both sides being heard?

A That was not part of the situation. Judge Fuld did not go into that in his report.

Q Judge Fuld never interviewed any representatives of the plaintiffs here, did he?

MR. SOUTHER: If you know.

A I don't know.

Q Did you think that perhaps both sides should be heard?

A No.

Q No.

Did you believe it would have been damaging to the shareholders to let their case be heard in court and let the court determine whether there had been misconduct?

A Yes.

Q Why?

A It would have been a costly procedure, and not in the best interests of the shareholders.

Q Because it was costly, it would not have been in the best interest of the shareholders; is that the point?

A That is a consideration.

Also it would take staff time from the Anchor Corporation, whose job it was to handle the -- their responsibilities to the fund.

The case was without merit and that was it.

Q That's what influenced you?

A Yes.

MR. TERSIGNI: Can we have marked the March 22, 1972 minutes of the Directors Qualification Committee as Plaintiffs' Exhibit 22 for identification.

(Minutes of the Directors Qualification Committee, dated March 22, 1972, marked Plaintiffs' Exhibit Exhibit 22 for identification, as of this date.)

MR. TERSIGNI: I have no further questions.

MR. POLLACK: Mrs. O'Connor, I have a few questions for you.

THE WITNESS: Yes.

EXAMINATION BY MR. POLLACK.

Q Did you have any business relationship or professional relationship with Mr. Haire prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Dr. Phillips prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Dr. Kemmerer prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Dr. Burks prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Burr prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Chalker prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Wade prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Monroney prior to the time that you became a director of

Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Hutchinson prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship with Mr. Martin prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship with Mr. Hopkins prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Dr. Robichard prior to the time that you became a director of Fundamental Investors?

A Not really.

Q Can you elaborate on your answer?

A I knew -- Dr. Robichard and I worked for the same corporation in the early '40's.

Q At any time thereafter did you have any business relationship or professional relationship with Dr. Robichard?

A No.

Q Have you had any business relationship or professional relationship with any director of Fundamental Investors at any time since you became a director of Fundamental Investors other than in your capacity as a director of Fundamental Investors?

A No.

Q Did you have any contact with Mr. Haire, Mr. Wickers or anyone else at Anchor Corporation regarding the deliberations of the disinterested quorum at any time between July 24, 1974 and January 22, 1975?

A Would you just repeat that?

MR. POLLACK: Please read the question.

(The pending question was read.)

A No.

Q Did Mr. Haire or Mr. Wickers or anyone else at Anchor Corporation attempt to influence you in any way in your deliberations as a member of the disinterested quorum?

A No.

Q Did you feel under any pressure from Mr. Haire, Mr. Wickers or anyone else at Anchor Corporation regarding your decision as a member of the disinterested quorum?

A No.

Q To your knowledge, did Mr. Haire, Mr. Wickers or anyone else at Anchor Corporation attempt to influence any other member of the disinterested quorum?

A No.

Q To your knowledge, did any other member of the disinterested quorum feel under any pressure from Mr. Haire, Mr. Wickers or anyone else at Anchor Corporation?

A No.

Q Was the pendency of the Lasker action discussed by you at any time in connection with your becoming a director of Fundamental Investors?

A No.

MR. POLLACK: No further questions.

MR. FRIEMDAN: I have no questions.

MR. TERSIGNI: Do you have any cross?

MR. SOUTHER: No, sir.

BY MR. TERSIGNI:

Q Mrs. O'Connor, when did you become a member of the Director Qualification Committee?

A The beginning of this year. I guess July 19~~[illegible]~~75.

Q Did you fill a vacancy on the committee?

MR. POLLACK: I object.

MR. SOUTHER: Since it's beyond the scope of the inquiry here, and the decision of these five directors having been made in January of that year, I object to the question. And I direct the witness not to answer.

Q Did you call Dr. ~~Robichard~~ Robichaud concerning the possibility of her becoming a director?

A Yes.

Q That was in 1973?

A Yes. That's my recollection.

Q And prior to calling Dr. ~~Robichard~~ Robichaud, did you discuss her with any other member of the Qualification Committee or any other person?

A I discussed her with John Haire.

Q Did you raise that subject for discussion or did Mr. Haire?

A I raised the subject.

Q What did you tell him?

A We had some vacancies, ~~and~~ -- on the board ~~are~~ coming up, and as the general board was asked if they had any names to submit, and I presented Miss ~~Robichard's~~ Robichaud's name.

Q What did Mr. Haire say, if anything?

A He said, "Fine. Go ahead and contact her."

Q Did you tell him why you thought she'd be a good --

A Certainly.

Q -- director?

A Yes.

Q What did you tell him?

A Oh, I don't recall specifically. I gave her background, what I believed to be her special abilities, that she had qualifications, in my estimation to be a director, from her business record.

Q Dr. ~~Robichard~~ Robichaud established this morning she was elected to the board on September 26th, I believe, 1973. And I believe we also established that that very same day she was appointed to the Director Qualification Committee.

Were you aware that she was appointed to that committee the same day she was elected to the board?

MR. SOUTHER: Is the question was Mrs. O'Connor aware that day?

BY MR. TERSIGNI:

Q Was she aware on or before that day that that was happening or would happen?

A The organization meeting ~~and~~ for the board was after our annual meeting ~~that~~ when new committees were set up for the year, so everyone was made aware who was serving on the various committees.

Q That board meeting took place the same day that the shareholders' meeting took place; correct?

A Yes.

Q So Dr. ~~Robichard~~ Robichaud was elected, the board had its reorganization meeting and Dr. ~~Robichard~~ Robichaud was appointed to the Director Qualification Committee all on the same day?

A Yes.

Q Did you vote on her appointment to that committee?

A I don't believe it was a formal vote.

Q Who proposed that she be assigned to that committee?

A I wouldn't really know. The work is divided up for all of the directors to serve on various committees.

MR. SOUTHER: Off the record.

(Discussion off the record.)

MR. SOUTHER: Are we finished now?

MR. TERSIGNI: I think so. No further questions.

MR. SOUTHER: Thank you.

(Time noted: 5:00 p.m.)

oOo

Mary S. O'Connor

Sworn and subscribed to before me
this 27 day of July 1976.

Florence G. Dwyer

FLORENCE G. DWYER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires October 9, 1977

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

---------------------------------------x

HOWARD M. LASKER and IRVING GOLDBERG, :

Plaintiffs, :

-against- : 73 Civ. 552 (HEW)

HARRY G. BURKS, JR., et al., :

Defendants. :

---------------------------------------x

Deposition of LOUIS FREDRICK LAUN, taken by Plaintiffs pursuant to agreement of parties, at the offices of Messrs. Seward & Kissel, 63 Wall Street, New York, New York on April 6, 1976, at 10:00 a.m., before David J. Feldman, a Certified Shorthand and Notary Public within and for the State of New York.

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* * *

LOUIS FREDRICK LAUN, called as a witness by the Plaintiffs, being first duly sworn by the Notary Public (David J. Feldman, C.S.R.), and stating his residence as 3038 P Street, Northwest, Washington, D.C. 20007, was examined and testified as follows:

EXAMINATION BY MR. TERSIGNI:

Q Mr. Laun, what do you do for a living?

A I'm Deputy Administrator of the Small Business Administration.

Q Are you a director of Fundamental Investors?

A Yes, I am.

Q Are you a director of any other fund in the Anchor group?

A Yes.

Q How many others?

A Six.

Q When did you become a director of Fundamental?

A The fall of 1971.

Q Did you become a director of the other six Anchor funds at the same time?

A No.

Q When did you become a director of the other six Anchor funds?

A Several of them at that time, and one of them later.

Q All but one at that time?

A All but one. No, that's not correct. All but two.

Q All buttwo at that time?

A Yes.

Q And when did you become a director of the other two?

A I don't know the date, but it was at the time the other two were formed.

Q And which two were they?

A Spectrum and Daily Income Fund.

Q Did you serve as a member of the so-called disinterested quorum?

A Yes, I did.

Q Do you recall a meeting of the quorum held on January 6, 1975?

A Yes.

Q Did you attend that meeting?

A Yes.

Q Was there a resolution introduced at the conclusion of that meeting?

A Yes.

Q Who introduced that resolution?

A I did.

Q Who drafted that resolution?

A I don't know.

Q Did you draft it?

A No.

Q But you read it?

A No.

Q You didn't read it?

A No.

Q What, if anything, did you do with it?

A I made a resolution.

Q Did you compose it at the meeting?

A I said it at the meeting.

Q Pardon?

MR. SOUTHER: He said, "I said it at the meeting."

A I said it at the meeting.

Q Did you read from a written resolution?

A No.

Q Did you compose the resolution at the meeting?

MR. SOUTHER: I object to the question. He's already answered that he made it when you asked that same question a moment ago.

MR. TERSIGNI: Yes, he was not responsive and I'd like an answer to my question.

MR. SOUTHER: He answered the question.

MR. TERSIGNI: No, he hasn't.

Q Did you compose the resolution or did someone else?

MR. SOUTHER: I object to the question.

MR. TERSIGNI: You may answer.

A I composed it.

Q Did you compose it at the meeting?

A Yes. I stated it. I did not write it down. I made the statement from my own head.

Q Do you recall the resolution that you proposed?

A Not in detail.

MR. SOUTHER: Do you mean the exact words?

Q How much of the resolution do you recall today?

A Part.

Q Part?

A Yes.

Q Would you tell us as much of the resolution as you can remember?

A My resolution was that the five of us should go with the alternative to number two,which was to seek for dismissal of the suit.

Q Can you tell us as much of the wording of the resolution as you can remember?

A That's all I recall.

Q You say you never wrote the resolution out during the course of the meeting?

A Yes.

Q Was there a draft of the resolution made by any other person, to your knowledge?

A Not to my knowledge.

Q And you did not read any draft of any resolution when you proposed it?

A That's correct.

Q Did you know the title of the Lasker case at the time you made this resolution?

A What do you mean the title?

Q The title.

MR. SOUTHER: He just said, "What do you mean the title?"

Q What I mean is the title. Do you know what the title is?

A No.

MR. POLLACK: Objection to the form of the question.

Q You don't know what a title is?

A No.

Q Do you know what et al means?

MR. SOUTHER: I object to this.

MR. TERSIGNI: Fine. You may answer.

A Yes.

Q What does it mean?

A And those who were there, and those.

Q At the time you made this resolution, had you ever heard the title Howard M. Lasker et al against Harry G. Burks et al?

A I was familiar with the words Lasker and Burks.

Q When you made the resolution you referred to Howard M. Lasker et al against Harry M. Burks et al?

MR. SOUTHER: I object to that. There is no testimony that he referred to those things when he made the resolution at all. He's told you the best of his recollection. Why don't you get to something substantive.

MR. TERSIGNI: I think this is very substantive, underscoring very.

Q Did you refer to Howard M. Lasker et al. against Harry G. Burks et al when you made the resolution?

A No.

Q Are you sure of that?

A Yes.

Q Let me show you Exhibit 17 for identification, which has previously been marked page 7, which contains the resolution. Is that the resolution that you made or did you make some other resolution?

MR. SOUTHER: Do you mean is that it word for word or is that the substance of it?

MR. TERSIGNI: Is that it. I assume he articulated certain words and I'm asking whether those were the words that he used, as are attributed to him.

MR. POLLACK: I object to the form of the question.

THE WITNESS: Would you repeat the question?

MR. TERSIGNI: Would you read back the question, please?

(The pending question was read.)

A This is the substance of the resolution I made, but I did not make it in these words.

Q Do you recall the words in which you did make it?

A Not exactly.

Q Have you served as a director of any other entity other than the Anchor funds?

A Yes.

Q And have you attended board meetings other than board meetings of the Anchor funds?

A Yes.

Q Have you ever heard reference made to a script for a directors' meeting?

A No.

Q Do you know what a script is?

A I know in the motion picture sense, theatrical sense.

Q Have you ever offered a resolution before?

A Yes.

Q Have you ever had occasion to offer a resolution which you read from a written document?

A No.

Q Did Mr. Kendall have a script at this meeting?

A Not to my knowledge.

Q This resolution, on page 7 of the minutes, refers to "Necessary action." Did you use those words?

A I don't recall.

Q What do you recall saying about what action Mr. Souther's firm should take, if anything?

A I don't recall referring to Mr. Souther's firm.

Q Tell us again, what was the resolution that you --

MR. SOUTHER: No, I object to that. You've asked him four times. He's told you that that is the substance of it. He's given you his best recollection of what he said,and I'll instruct him not to answer any further questions on that.

Q Do you recall referring to the law firm of Seward & Kissel?

MR. SOUTHER: I object to that. He's already answered that question and he said he doesn't remember.

Q Would you look at page 7 of the minutes and see whether that refreshes your recollection. I call your attention specifically to the first line of the resolution. Page 7, Mr. --

MR. TERSIGNI: Would you answer my question?

MR. POLLACK: Which question?

A I'm really very confused as to what your question is.

Q Did you propose that any directions be given to Seward & Kissel at this meeting?

A No.

Q Do you see the resolution which is attributed to you on page 7 of the minutes?

A Yes.

Q Did you make such a resolution in words or substance?

A I've already told you what my resolution was.

Q Did you refer as this resolution purports to say you referred to Seward & Kissel?

MR. POLLACK: Objection to the form of the question.

MR. TERSIGNI: You may answer.

A I never mentioned Seward & Kissel.

Q Did you come to this meeting with an open mind, Mr. Laun? The meeting of January 6, 1975.

A Yes.

Q Did you make up your mind at the meeting?

A Yes.

Q You certainly made it up before you proposed your resolution, didn't you?

A Yes.

Q Do you recall when during the meeting you made up your mind?

A It was an evolutionary process, going all the way back to the original material.

Q And did you in substance propose that the board cause action to be taken to have the Lasker action dismissed?

A Yes.

Q Did you propose that the action be dismissed against all of the defendants or some of the defendants?

A I don't recall ever mentioning whether it was all or some. Just that the action be dismissed.

Q Did you give consideration to each of the defendants in determining whether or not any one of them should be sued?

A No.

Q You treated them all as a group?

A Yes.

Q Why did you do that, sir?

MR. SOUTHER: Objection to the form of the question.

MR. TERSIGNI: You may answer.

A It's one case.

Q Do you believe everyone should be judged on his own merits?

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: You may answer.

A In general, yes, I believe that people should be judged on their own merits.

Q Did you judge each of these defendants on his own merits?

A I was judging the actions of our advisor in this case.

Q But there were other defendants other than the advisor, weren't there?

A I never thought of -- I never separated any of them out.

Q Did you judge each one on his own merits?

MR. SOUTHER: Objection to the form of the question.

MR. TERSIGNI: You may answer.

A No.

Q Why not, sir?

A Because of the fact that I was looking at one case.

MR. JOSEPH: I object to the entire line of questions on the ground that it goes beyond the scope of these depositions that is permitted by the court's order. The questions go to the validity of the judgment made by the quorum.

MR. TERSIGNI: That is what I'm asking about.

Let the record indicate that Mr. Mallis of my office has joined the deposition.

MR. POLLACK: How is that spelled?

MR. MALLIS: M-a-l-l-i-s.

Q When you proposed this resolution, Mr. Laun, did you understand that you were proposing that the action be terminated against all of the defendants?

A Yes.

Q Did you know who the defendants were?

A No.

Q Did you ever ask who they were?

A No.

Q Was it your belief that you were asking that an action be terminated against people that you didn't even know?

MR. SOUTHER: Objection to that.

MR. TERSIGNI: You may answer.

A I was looking at the actions of Anchor as the fund's advisor in toto, not with regard to any individual's part of that action.

Q Didn't you know that there were defendants other than Anchor in the case?

A It never basically occurred to me.

Q Do you realize today that you were proposing that the action be dismissed against defendants other than Anchor?

A I do today.

Q Have you ever focused in on that question?

A No.

Q As far as you know, you've never made a decision on that question?

MR. SOUTHER: I object to that question.

MR. TERSIGNI: You may answer.

A I was focusing on whether or not Anchor as an advisor was properly discharging its duties to the fund. Not in regard to what any individual did.

Q What about Mr. Phillips?

MR. SOUTHER: What about him?

MR. TERSIGNI: You interrupted me, Mr. Souther.

MR. SOUTHER: All right.

Q Did you know that Mr. Phillips was a defendant?

A Yes.

Q How did you know that?

A Because he came into the room when we sat down to discuss what we would do in the case.

Q Mr. Phillips came into the room?

A This was at our December 18th meeting.

Q Came into the room and did he say anything other than that he was a defendant in the case?

A He did not say that he was a defendant in the case.

Q My question is how did you find out he was a defendant.

A When the group of the five of us met on the 18th to decide what we would do, we called in the other directors who were at that directors' meeting to interrogate them and ask them certain questions.

Q Who did you call in?

A Dr. Phillips, Mr. Kemmerer, Mr. Haire.

Q My question, Mr. Laun, again is how did you find out Mr. Phillips was a defendant?

A I don't know.

Q Other than Anchor and Dr. Phillips, did you know the identity of any other defendants?

A I had a general conception, but I never focused on individuals in this case. I was thinking of the merits of the overall case.

Q My question, Mr. Laun, is, other than Anchor --

A Other than Anchor --

Q (continuing) -- and Mr. Phillips, did you know the identity of any other defendant in the case?

MR. SOUTHER: Please read back his last answer.

(The requested portion of the record was read.)

Q Would you answer my question, please?

A Would you repeat the question, please?

MR. TERSIGNI: Read the question.

(The pending question was read.)

A I knew that all of the directors who were there at the time were defendants, but I don't know that that was the totality of the number of people who were defendants.

Q Can you name the names of any person or company other than Anchor and Dr. Phillips that you understood at the time to be a defendant in the Lasker action?

A Dr. Kemmerer -- excuse me, at what time?

Q At the time of this decision, at the time you made this resolution on January 6, 1975.

A Dr. Kemmerer, John Haire, Harry Burks, possibly Mr. Monroney.

Q Anybody else that you knew to be a defendant?

A I can't recall their names now.

Q Was it your understanding that you were proposing that the lawsuit be terminated as against these individuals as well as Anchor?

A I was focusing on the impact on the shareholders and not really so much on people or Anchor. It just never crossed my mind to think about the individuals.

Q Did you think about Dr. Phillips when you made this resolution?

A No.

Q Who did you think of, if anyone?

A The shareholders of Fundamental Investors.

Q Did you think of any of the defendants?

A I thought of the totality of the defendants.

Q Mr. Laun, prior to proposing this resolution, did you ever read the complaint in this case?

MR. SOUTHER: Mr. Tersigni, it's a small room and it isn't necessary to raise your voice.

MR. TERSIGNI: What does that mean, Mr. Souther? Are you saying I'm shouting?

MR. SOUTHER: I think you just raised your voice beyond a necessary level.

MR. TERSIGNI: Am I shouting?

MR. SOUTHER: I think I made my point.

MR. TERSIGNI: I don't think you have. I think you're engaging a lot of histrionics for the record, that's what I think.

MR. SOUTHER: You can think whatever you want. I asked you nicely --

MR. TERSIGNI: So can you, Mr. Souther.

MR. SOUTHER: I asked you as nicely as I can to stop raising your voice. It is unnecessary.

MR. TERSIGNI: What I'm asking you is am I shouting or am I speaking too loudly?

MR. POLLACK: Yes.

MR. SOUTHER: You're speaking too loudly.

MR. TERSIGNI: I disagree with you. I don't think I am and I don't know why you insist on making that kind of statement for the record.

Q Now, Mr. Laun, counsel having had their say, did you ever read the complaint in this case prior to proposing that it be dismissed?

A The complaint?

Q You know, the complaint, yes. The complaint.

A What is the complaint? Could you define what you mean by the complaint?

MR. SOUTHER: Do you want to show it to him and ask him?

MR. TERSIGNI: No, I don't want to show it to him.

Q You do understand that on January 6th you made a motion that this lawsuit be dismissed?

A Yes.

Q And did you know whether a complaint had been filed in the lawsuit?

A See, you're using legal terms. I'm not a lawyer.

Q Whether you are a lawyer or not, Mr. Laun, the question is did you know that a complaint had been filed?

A I knew that there was a lawsuit. If that is what you mean by complaint --

Q Did you know whether the plaintiffs in the case had filed some written statement of their grievance?

A I knew there was a lawsuit.

Q Did you ever inquire whether the plaintiffs had filed some written statement of their grievance?

A No.

Q Did you ever read any statement of the plaintiffs' grievance?

A I don't recall.

Q Do you know what it was that you were proposing be dismissed?

A Yes.

Q I'd like to show you a copy of the summons and complaint in this case. I don't think we have to mark that for identification, Mr. Souther.

And my question to you, Mr. Laun, is, did you ever read that document prior to proposing that that complaint be dismissed?

A I recall reading it but I don't recall when.

Q Was it before or after January 6, 1975?

A Before.

Q Where did you get a copy?

A I don't recall.

Q Do you recall asking for a copy?

A No.

Q Do you recall whether someone just gave you a copy?

A I recall seeing and reading a copy. I do not recall how I got the copy.

Q And you're sure that it was before January 6, 1975?

A Yes.

Q Do you recall looking to see who the defendants were?

A No.

Q Do you recall reading the caption, the very first part of the very first page of this complaint?

A No.

Q Were you interested in who the defendants were?

A No.

Q You weren't?

A Not in the individual list of defendants.

Q Pardon?

A Not in the complete list.

Q And it was of no concern to you that Mr. Phillips was a defendant?

A No.

Q I ask you again, how did you come to know that Mr. Phillips was a defendant?

A At some point it was -- I was aware of the fact that all of the directors who were on the board at the time of the default were named in the suit.

Q Did you come to learn that by reading this complaint?

A Not by reading this complaint.

Q How did you come to learn it?

MR. SOUTHER: I object to that. He's answered that question as well as he can at least three different times. He told you at some point he became aware of it. He doesn't recall when. Please move on.

Q How long have you known Mr. Phillips?

A I met him in 1948.

Q Have you maintained a relationship with him since that time?

MR. POLLACK: Objection to the form of the question.

MR. TERSIGNI: You may answer.

A I've seen him at different times during that time. I can't say whether that constitutes maintaining a relationship.

Q Do you consider him to be a friend?

A Yes.

Q Do you consider him to be a close friend?

A No.

Q I call your attention to page 7, again to the resolution which is attributed to you, and that resolution refers to having the complaint dismissed. Do you see that?

A Yes.

Q Did you propose that the complaint in the Lasker action be dismissed?

A I believe I've described what I proposed.

Q My question is did you propose that the complaint in the Lasker action be dismissed as this resolution says?

A We're on that word again. I used the word lawsuit. I did propose that we take a case to dismiss the lawsuit.

Q And at the time this resolution was made, you didn't even know what a complaint was; is that right?

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: You may answer.

A The word complaint just was not used in our discussions.

Q That's not my question. My question is, at the time this resolution was made, you didn't even know what a complaint was; is that right?

MR. SOUTHER: I object to the form of the question.

Don't bother answering it. I'll instruct him not to answer that, again.

Q At the time this resolution was made, did you know what a complaint was?

A I ~~knew~~ know what a complaint is.

Q Did you know what a complaint in a lawsuit was?

A Are you asking me in general about complaints in lawsuits or are you asking me about this lawsuit?

Q I'm asking you at the time you made this resolution, did you know what a complaint in a lawsuit was, in general?

A In general, I don't really recall having used the word or thought about it.

Q When you used the word or whether you thought about it, did you know what a complaint in a lawsuit was?

MR. SOUTHER: I object to the form of the question as being unnecessarily repetitious. The man has answered that question repeatedly.

MR. TERSIGNI: He hasn't answered.

MR. SOUTHER: He told you what his resolution was. I'll instruct him not to answer.

MR. POLLACK: I would add that the questioning is very far outside the scope of discovery as defined by Judge Werker, and on that basis I would object.

MR. TERSIGNI: Could I have that document back, please?

THE WITNESS: Yes.

Q At this meeting of January 6, 1975, was Mr. Souther present?

A Yes.

Q Other than the four directors, all except Mrs. O'Connor, and Mr. Souther, do you recall anyone else being present?

A I don't recall anyone else.

Q The meeting was held at the yacht club; is that right?

A Right.

Q And what time was the meeting held, do you recall?

A In the evening.

Q The minutes indicate that there was about an hour and a half's worth of discussion before the meeting was convened; is that in accord with your recollection?

A Yes.

Q What was discussed during that hour and a half?

A It involved a reading of the material that had been prepared to date, and a discussion of the sequence of events in the case.

Q Do you recall anything you said in that hour and a half?

A No.

Q Do you recall anything that anybody else specifically said during that hour and a half?

A No specific recollections.

Q Do you recall anything being said by Mr. Souther during that hour and a half?

A I recall him at some point introducing a report that we had asked him for.

Q I'm talking about the hour and a half before the meeting convened. Are we clear?

A I have no specific recollection, no.

Q Do you recall whether Mr. Souther said anything during that hour and a half?

A I don't even recall if he was there during that hour and a half.

And in fact, during that period, the directors arrived sequentially, so there was not a group of us together for an hour and a half.

Q Do you recall the meeting being formally convened at approximately 7:30 p.m.?

A I don't recall the time.

Q About an hour and a half after?

A May I ask a question as to when the meeting closed and I can work back to when it --

Q The minutes, Mr. Laun, indicate that the meeting was convened at 7:30 p.m., but I don't think that -- yes, they also show that the meeting adjourned at 10:15 p.m.

My question is do you have a recollection of the meeting being convened at approximately 7:30 p.m.?

A I have no fix on the exact time.

Q According to the minutes, the formal meeting would have lasted approximately two and three quarter hours. Is it your recollection that the meeting lasted that length of time, or approximately that length of time or did it last ten minutes?

A My recollection is that it lasted that length of time, which included eating a meal.

Q And was there discussion throughout?

A Yes.

Q Was the discussion limited to the matter before the house or did you talk about other things?

A We talked abou other things as well.

Q How much of the discussion would you say concerned the Lasker action?

MR. SOUTHER: Excuse me. Would you make it clear whether you're talking now about the 6:00 to 7:30 or the meeting --

MR. TERSIGNI: Talking about --

MR. SOUTHER: Excuse me. 7:30 to 10:15.

Q Do you understand that, Mr. Laun?

A Yes.

Q Is your answer the same or do you want to change it?

A No. I would say it was nearly all on the Lasker action for the length of the period.

Q So it's substantially correct that for a period of two hours and 45 minutes the five of you, subsequent to the formal convening of the meeting, discussed this lawsuit; is that right?

A Yes.

Q Did you discuss the pros and cons of what the quorum ought to do and so on?

A Yes.

Q And did you consider these to be matters of importance?

A Yes.

Q Would you summarize for me what was said during that two hours and 45 minutes?

A We took up first the -- refreshed our memory as to the sequence of events. We then moved to a consideration of the three alternatives that had been listed in Judge Fuld's memorandum and discussed each of those in detail as to the pros and cons.

And then had our resolution.

Q My question, Mr. Laun, is what was said?

A We first took up the alternative number one as to whether or not we should join in the suit. And we felt that we should not join in the suit because of the severe damage that we felt that would cause to the stockholders of Fundamental Investors.

The reasons we felt were quite numerous. Would you like me to go into all of this?

Q Yes, I would.

A All right.

We felt basically that there wasn't a great deal of merit to the case in itself, and the fact that we would really not have an awfully good chance of winning. This was based upon input that we received.

We felt that Judge Fuld indicated to us that Anchor was not a guarantor in this case, but was an advisor. Anchor was not in violation of any laws or regulations, and he listed quite a few of these that he had taken up independently.

And we felt on that, also, that they had used prudent judgment. We had gone through all of the restrictions they had with regard to the buying of commercial paper either directly or from dealers. We ~~threw~~ went through the other people who had been -- found themselves with Penn Central paper at the time of default. And felt that Anchor had conducted itself in a proper manner during this case.

We then moved over to a consideration of the effect upon the stockholders of Fundamental Investors in case we were to go with that type of action. We found those to be severe.

The first part of it, we felt, would be a very, very severe disruption. We really weren't able to quantify the disruption but we felt it would be severe in many areas. For example, having the fund in opposition, suing its advisor, would create a deterioration of relationships and might cause a necessity to get a new advisor.

We discussed what the problems would be with regard to getting a new advisor, and could we get a new advisor if we had a situation in contention at this stage.

We considered the effect upon personnel. We had security analysts and people in the organization who were making the day to day recommendations in regard to trading in the ~~Anchor~~ Fundamental portfolio.

And we felt that there was a substantial chance that we would not only lose good personnel, but we would find it very, very difficult to attract other personnel if we had a situation in which the fund was suing its advisor.

We felt that this would absolutely stop Anchor -- correction, Fundamental -- from getting additional stockholders, because the marketing effort would pretty well stop at this particular point.

And we were concerned about what this might do in terms of redemption. We felt we were in a depressed stock market. I believe that the dollar value per share was somewhere in the $5 range at this area. We were concerned that many of our individual stockholders would be panicked by this and would take losses from the prices that they had paid for the shares.

And this was of great concern to us.

We also thought about the -- suppose we won, what would be the impact? And there was some concern as to whether or not Anchor would have the assets in order to pay us if we won.

Then we tried to quantify the amount that we would win if we won. And the best number that we could come up with was that it would be somewhere around 10 cents a share, or about 2 per cent of the fund's assets.

And we felt that out of that would probably come rather severe legal expenses during that so that it would be well under 2 per cent is what we would get out of this.

In weighing all of the disruption, personnel events, the impact upon the many small stockholders who had invested in this in hopes of retirement, et cetera, we felt that to put that amount of effort for something that was less than 2 per cent of the fund would be unconscionable.

We felt because the fund actually fluctuates by more than 2 per cent in any given week, we would much prefer to have the personnel working on the work of the fund.

There probably were others. Those are the ones that come to mind off the top of my head.

Q Did you agree with all of that?

A Yes.

Q Were you aware of the lawsuit that had been brought against Goldman Sachs as of the time you made this decision?

A Yes.

Q Do you know whether that caused any disruption?

MR. POLLACK: Objection. Outside the scope of the discovery as ordered by Judge Werker.

MR. TERSIGNI: You may answer.

MR. SOUTHER: No, I don't think it's appropriate to go into that at this time.

MR. TERSIGNI: Mr. Souther, the witness has just told us in quite a bit of detail what his reasons were, and he spoke about disruption and about Anchor's personnel being involved in spending time in the lawsuit and so forth.

Now, other than giving a prepared script, I think I'm entitled to cross-examine, and that is what I'm doing.

MR. SOUTHER: I object to your smart remark about a prepared script.

MR. TERSIGNI: Mr. Souther, you've been making smart remarks since we got here, all right?

MR. SOUTHER: Mr. Tersigni, you're welcome gave and I continue my objection to the attempt to reopen or relitigate or to pick apart the action against Goldman Sachs. The action against Goldman Sachs is not what is at issue in these discovery proceedings.

BY MR. TERSIGNI:

Q At the time of this meeting on January 6th, were you aware, Mr. Laun, that the fund had prosecuted an action against Goldman Sachs?

A Yes.

Q Were you aware whether or not in connection with the prosecution of that action, Anchor and its personnel had devoted time?

A I'm not aware as to who devoted time, other than counsel.

Q Were you aware of any disruption caused --

MR. SOUTHER: I object to the question.

MR. TERSIGNI: Let me finish it before you object to it.

MR. SOUTHER: I thought you had finished it. Let him finish his question.

Q Were you aware of any disruption caused to Anchor by the prosecution of the Goldman Sachs action?

THE WITNESS: Give me the sentence again.

Q In discussing the disruption and the trouble in finding personnel and so forth that you've testified about, I would say, about three minutes ago --

A Right.

Q (continuing) -- do you recall using the word "we"?

A Yes.

Q What did you mean when you said "we"?

A In that context I was referring to we, the directors of Fundamental.

Q Were you referring to Anchor?

A No.

Q I believe you testified that you considered it detrimental for the fund to be suing its advisor. Is that in substance correct?

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: You may answer.

A Not necessarily. If the fund felt that the advisor should be sued, it would not be detrimental. It would be necessary.

Q Even if it caused disruption?

A It would be a matter of judgment for the directors to choose between the two situations.

Q Do you envision situations where the fund should sue the advisor even though it might cause all the difficulties you indicated?

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: Pardon?

A I have not speculated upon things that they could do that would be --

Q Do you believe there are situations where a fund should sue its advisor regardless of whether it causes disruption?

MR. SOUTHER: Objection to the question. You mean could he?

MR. TERSIGNI: You may answer.

A Could I envision situations?

Q Do you believe that there are situations where a fund should sue its advisor regardless of any disruption?

MR. POLLACK: I object. I don't think this witness' beliefs at this time or indeed at any other time are relevant to the inquiry here.

MR. TERSIGNI: You may answer.

A Yes.

MR. TERSIGNI: Mr. Pollack?

Q So it was just in this case that you felt that that should not be done?

MR. POLLACK: I object to the form of the question.

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: You may answer.

A We felt in this case that that should not be done.

Q Did you distinguish between the fund affirmatively suing its advisor and two shareholders of the fund suing the advisor derivatively?

MR. POLLACK: Objection to the form of the question.

MR. SOUTHER: Did you understand what that means?

A I'm wrestling with that again. Please do that again.

Q At the time you made this decision, did you make a distinction in your own mind between the fund, Fundamental Investors affirmatively suing its advisor on the one hand, and on the other hand, two investors of the fund suing the advisor derivatively, with the fund simply taking no active role, did you make a distinction between those two cases?

A Our motion covered the action of the fund.

Q Forget about what your motion --

MR. SOUTHER: Excuse me. He's answering the question.

MR. TERSIGNI: I don't think he is.

MR. SOUTHER: He's trying to. If you don't think he has, then you'll undoubtedly put a series of questions to him.

MR. POLLACK: Do you want to take a break? The reporter's man has just arrived here. He wants your minutes.

MR. TERSIGNI: Sure.

(A short recess was taken at this time.)

(Continued on page 48.)

BY MR. TERSIGNI:

Q Mr. Laun, do you recall what the pending question was?

A I prefer to have you --

Q I'll have to restate it.

I'm calling your attention to this January 6, 1975 meeting, and my question is as you introduced or proposed this resolution, did you as one of the quorum, understand the difference, if any, between the fund, Fundamental, affirmatively suing its advisor on the one hand, and on the other, two of the fund's shareholders suing the advisor derivatively?

MR. POLLACK: I object to the form of the question.

MR. TERSIGNI: Fine. You may answer.

A What I responded to your previous question, I really ~~reponded~~ responded to the alternative one. Another one of the alternatives in Judge Fuld's memorandum was whether or not we could join with the stockholders, I believe, in such a suit, and when we considered the alternatives, the three alternatives, we felt that the net effect of that would be the same on Fundamental stockholders as joining in the suit.

Q Mr. Laun, my question, and with all due respect, if you'll try to focus in on my question and answer my question, I think --

A I thought I was doing that.

Q I say that with all due respect, because sometimes --

MR. JOSEPH: I believe the answer was completely responsive.

MR. TERSIGNI: I don't. And I say that quite respectfully.

Q My question is, at the time you proposed this resolution did you understand the difference between the fund's suing affirmatively on the one hand, and on the other two shareholders of the fund suing derivatively?

A Yes.

Q Did you distinguish between those two occasions?

A Yes.

MR. SOUTHER: I object to that. That's the vice of your form of questioning. He understood that there was a difference between the two and now you're trying to say that they necessarily had different effects.

MR. TERSIGNI: I'm not trying to say anything.

MR. SOUTHER: Yes, you are. The wording of that question.

MR. TERSIGNI: Let's let the witness tell us.

MR. SOUTHER: Please do it, and why don't you just ask him questions instead of suggesting things?

BY MR. TERSIGNI:

Q What was the difference, Mr. Laun?

A We felt that the effect --

Q No --

MR. SOUTHER: Excuse me.

MR. TERSIGNI: He's not answering my question.

My question is what was the difference, what was the difference between those two?

MR. SOUTHER: You answer any way you understood it.

A As far as the effect upon the shareholders, we could see no difference between the two.

Q You thought they were the same?

A No.

Q What was the difference?

A One is that the fund is suing, and the second is that the stockholders are suing.

Q Were you aware of other derivative actions pending against the advisor as of the time you made this proposal?

MR. POLLACK: I object to the form of the question.

I also think it is outside the scope of the inquiry as set forth by Judge Werker.

MR. TERSIGNI: You may answer.

A No.

Q Are you aware that other members of the quorum have testified here before you?

A Yes.

Q Are you aware that Mr. Haire has testified?

A Yes.

Q How are you aware of that, sir?

A I was told that I was the last to testify, and that everybody had testified.

Q Who told you that?

A Mr. Souther.

Q Did you discuss any of the prior testimony?

A No.

Q If I were to tell you that Mr. Haire has

I'm simply asking questions, Mr. Pollack, and I'd like an answer to my question.

MR. POLLACK: I take the strongest exception to this question. It's absolutely improper in form and in procedure and outside the scope of the discovery as ordered by Judge Werker.

MR. SOUTHER: And so there's no doubt, the witness has been testifying fully for an hour and fifteen minutes, so he's been allowed to testify.

I instruct him not to answer. It's totally irrelevant.

BY MR. TERSIGNI:

Q Did you consider each of the three alternatives separately and independantly, Mr. Laun?

A Yes.

Q Did you conclude that the fund itself should not affirmatively sue its advisor?

A Yes.

Q Did you conclude that the fund itself should not affirmatively sue any of the other defendants?

A It was all one decision.

Q You didn't distinguish between the

individual defendants and the advisor, did you?

A That's correct.

MR. POLLACK: Somehow I think we've heard this testimony before today.

MR. TERSIGNI: Before what, today?

MR. POLLACK: Before, in the day. You questioned him for about fifteen minutes on this very point.

Q Having rejected that alternative, that is, the fund's affirmatively suing, did you separately consider whether or not the shareholders who are suing in the Lasker action should simply be permitted to continue their action?

MR. POLLACK: Object to the form of the question.

MR. TERSIGNI: You may answer.

A We considered the alternative action of allowing that to go forward. And -- period.

Q Did you, yourself, Mr. Laun, reach a conclusion on that alternative?

A Yes, I did.

Q What conclusion did you reach?

A That the effect upon the shareholders would be the same as the first.

Q Would you explain why you reached that conclusion?

A All right.

Because of the fact that if the directors, having an alternative course of action opened to them, namely, of stopping this, allowed it to go on, this would really be the same as joining with them.

So that the same -- the suit would go on, there would still be disruptions, feeling the directors had joined in it, would have the same effect upon the personnel, upon the ability of the fund to market, about all the other things I mentioned on the first one.

Q How long have you been a director of Fundamental and the other funds in general?

A In the fall of 1971.

Q So approximately five years, with the exception of those two funds which you joined later; is that right?

A It would be five years this fall.

Q Is that right?

A It will be five years this fall.

Q During that period of approximately five years, are you aware of any other derivative actions brought against Anchor?

MR. SOUTHER: I object to the question insofar as it calls for anything outside the scope of the period under inquiry here.

MR. TERSIGNI: You may answer.

MR. SOUTHER: No, you may not answer. We're not going to go into a discussion of any derivative actions that have been brought outside of the period involved here, and that period, lest there be any doubt, Mr. Tersigni, is the period during which these five directors functioning as the board in reaching a determination as to what, if any, action they should take with respect to the Lasker suit.

In addition to that, we have allowed you to inquire into the relationship between them and the Directors Qualification Committee insofar as they become directors because Judge Werker also said you could do that.

Indeed, that's what he said you could do.

Q During the last five years that you've been a director, has the board made a decision with respect to any other derivative actions and whether they should be permitted to proceed?

MR. SOUTHER: Unless you're going to limit your questions to the period that's of relevance here, I'll instruct the witness not to answer.

MR. POLLACK: I object further on the grounds that it's outside the scope of discovery as ordered by Judge Werker, which is to focus on the narrow point of the relationship between the disinterested quorum and the Directors Qualifications Committee. We are not here to review other litigations.

Q Is it your understanding as a director of the fund that the directors have an obligation to make a judgment as to every derivative action and whether it should be permitted to proceed?

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: You may answer.

A What's a derivative action?

Q Do you know what a derivative action is?

A No.

Q Do you know whether the Lasker action is a derivative action?

A No.

Q Mr. Laun, for purposes of elucidating my question, a derivative action is an action where a shareholder sues, asserting a right belonging to the fund. That's known as a derivative action.

An example of a derivative action is the Lasker action, the one that you proposed be dismissed.

Now, my question is, is it your understanding as a director that the directors have an obligation to make a judgment as to all derivative actions and specifically whether any of those actions should be permitted to proceed?

MR. POLLACK: Object as outside the scope of discovery.

MR. SOUTHER: I'll instruct the witness not to answer.

Q Have you yourself as a director participated in a decision relating to whether any other derivative action at Anchor or against Anchor, should be permitted to proceed?

MR. POLLACK: Same objection.

MR. SOUTHER: All the same objections that I have stated before, and unless you're going to limit it to the scope of the discovery that Judge Werker has permitted and the time period that's of relevance here, I'll instruct him not to answer.

MR. POLLACK: I personally think that more is at issue than merely the time period. I think this is an attempt to go into other litigation.

MR. SOUTHER: I think I've stated my objection to be broader than that, Mr. Pollack. I've referred to Judge Werker's very limited discovery and the fact that we've allowed substantially more than Judge Werker has permitted.

MR. TERSIGNI: As I stated earlier, the way the defendants construe Judge Werker's decision, about the only question I'm entitled to ask is did you act in good faith, and upon the witness saying yes, we all go home.

I think that's rather naive.

MR. JOSEPH: I object to that statement.

MR. TERSIGNI: I think it's naive, Mr. Joseph. Let me finish.

MR. JOSEPH: That is not what happened. here this morning. You asked questions beyond that.

MR. TERSIGNI: Almost in every case he's been instructed not to answer except where he's giving, what I call the party line.

He's explained his reasons. He just made the statement, for example, that in his view, permitting a derivative case to proceed is tantamount to the fund affirmatively bringing the suit, and here I am trying to understand what the mental process of the gentleman was in arriving at that conclusion, and you gentlemen are saying that while he can state that position, which is what I call the party line, any cross-examination or probing as to why he believed that is beyond the scope of the discovery allowed.

I think that's clearly simplistic.

MR. JOSEPH: Without commenting in detail on what you said, I take great exception to your characterizing as the party line or a script on his testimony given by a sworn witness, which is unfavorable to your position.

If that is anything unfavorable to your position, your claims constitutes the party line, well, there's not very much we can do about it in this case.

MR. TERSIGNI: Mr. Joseph, I have not objected to the witness saying anything unfavorable to my case. What I'm objecting to is the fact that defense counsel will only permit the witness to give testimony that the defense conceives to be in accord with its motion. And every time I try to cross-examine as to why the witness believes what he said, I'm met with the argument that it's beyond the scope of discovery.

No one said when this gentleman, a few moments ago, proceeded to recount all of the reasons why he made his decision, nobody objected that that was beyond the scope of discovery.

And when I tried to cross-examine, I'm met with that objection. That's what I object to.

MR. POLLACK: I do not think your statement is accurate. You have examined in this case over a three-month period, the transcripts have mounted up into a thousand pages or more. You have had extensive discovery.

I think we have permitted you to go far beyond the mandate of Judge Werker, and I think that the statement by you that you've not been able to probe the reasons why they reached the decision that they did, is completely inaccurate.

You are now attempting to go into deliberations on other litigations. Previously, you attempted to go into their activities or thoughts on the Goldman, Sachs litigation. Neither of those is at issue in this case.

BY MR. TERSIGNI:

Q Mr. Laun, at the January 6th meeting, was it the purpose to decide what position should be taken with respect to the Lasker action?

A Yes.

Q Was that the sole purpose of the meeting?

A Yes.

Q Were you there to decide anything with respect to the Goldman, Sachs action?

A No.

Q That wasn't any part of your purpose, was it?

A No.

Q And yet, you did discuss the Goldman, Sachs action; did you not?

A I have a general recollection of discussing it.

Q And you discussed it because you considered it to be relevant to the decision you were there to make?

MR. SOUTHER: I object.

Q Isn't that tight?

You may answer.

A Because of the fact that it quantified the amount that would be available to the stockholders.

Q And did you consider --

MR. SOUTHER: Excuse me.

Have you finished your answer, Mr. Laun?

THE WITNESS: Yes.

MR. SOUTHER: All right.

Q And did you consider that discussion of Goldman, Sachs to be relevant to the decision you were there to make?

MR. SOUTHER: I object to the question. You've asked him and he answered the extent to which that factor came into their thinking.

MR. POLLACK: I object to the form of the question. The witness didn't say they discussed the Goldman, Sachs action. He said it was mentioned insofar as related to the quantification of the dollars available to the stockholders.

BY MR. TERSIGNI:

Q Did Mr. Souther comment on the Goldman, Sachs action at the January 6th meeting?

A I don't recall.

Q Did you, Mr. Laun, consider the Goldman, Sachs action to be relevant to the decision you were making?

MR. SOUTHER: I object to the form of the question. You asked him that several times.

Q What relevance did you believe the Goldman, Sachs action had to the decision you were asked to make?

MR. SOUTHER: Mr. Laun has already told you that the extent of that was the fact that he quantified the amount at issue.

MR. TERSIGNI: Could I have an answer to my question?

MR. SOUTHER: No, you can't. I'm not going to go into the Goldman, Sachs action. We've made it clear a number of times that that has nothing to do with this question here.

BY MR. TERSIGNI:

Q Was the Goldman, Sachs action discussed at the December 18th meeting of the quorum?

A I'd say in the same way as the January 6th meeting.

Q What do you mean by in the same way?

A The quantification of the dollars.

Q Is that the only relevance that you believe it had?

MR. SOUTHER: Object to the form.

A Yes.

Q Do you recall --

A That's all I recall.

Q Do you recall any member of the quorum raising the question at the December 18th meeting whether or not the decision to settle against Goldman, Sachs compelled the quorum to continue the Lasker action? Do you recall that question being asked?

THE WITNESS: Give me that question again, please.

MR. TERSIGNI: Read it back.

(The pending question was read by the reporter.)

A I don't recall.

Q Let me call your attention to the bottom of page 5 and the top of page 6 of the minutes of the December 18th meeting, signed by Mr. Souther and Mr. Kendall.

I ask you whether that refreshes your recollection.

A Whereabouts?

Q The bottom of page 5 and the top of page 6.

MR. SOUTHER: Feel free to look at any other portion of it that you wish to.

A All right, I've now read it.

Q The question is, does that refresh your recollection?

A No.

Q Do you have any recollection at all of Mr. Souther making comments about the Goldman, Sachs action at this December 18th meeting?

A No.

Q Do you recall which of the quorum raised the question with respect to the Goldman, Sachs action?

A No.

Q Did you consider the Goldman, Sachs action to be relevant for the purpose indicated at pages 5 to 6 of those minutes?

A I just don't recall this particular part.

Q Did you read the minutes insofar as they discuss and summarize Mr. Souther's comments?

MR. SOUTHER: What is that?

Excuse me, I asked you a question.

MR. TERSIGNI: Well, he has the minutes in front of him.

MR. SOUTHER: Well, where?

MR. TERSIGNI: I would are say on the same page or --

MR. SOUTHER: There are several references to Mr. Souther in these minutes and I'd appreciate if you'd point out which one you're talking about.

MR. TERSIGNI: I just said Mr. Souther's comments about the Goldman, Sachs action.

THE WITNESS: What about them?

Q Do you recall Mr. Souther making comments about the Goldman, Sachs action?

MR. SOUTHER: He's already testified that he doesn't.

MR. TERSIGNI: I believe what he said was that he doesn't recall what appears on pages, bottom of page 5 and the top of page 6.

MR. POLLACK: You asked him more than that. You asked him whether he recalled Mr. Souther making any comments about the Goldman, Sachs action and his testimony was no, that he did not recall.

BY MR. TERSIGNI:

Q Is that right, Mr. Laun?

MR. SOUTHER: What's your question now, is that his testimony or is that his recollection?

Q You don't remember anything that Mr. Souther may have said on the subject of Goldman, Sachs; is that right?

MR. SOUTHER: Object to the form of the question.

A I recall the amounts, the things that Mr. Souther said at the top of page 5 about Goldman, Sachs.

I don't recall the things he said at the bottom of page 5.

Q Do you recall any of the statements attributed to Mr. Souther on page 6 with respect to the Goldman, Sachs action?

A I recall No. 2, but I do not recall the relevance in this particular situation. But I remember

Mr. Souther talking about the possibility that the fund might have been held to a higher standard of inquiry than plaintiffs in the Welch action, on the theory that it was a sophisticated investor, but I don't recall that in relation to the Goldman, Sachs situation.

Q Do you recall what words Mr. Souther used in conveying the substance of what you just indicated?

A No.

Q What did you understand Mr. Souther to be saying when he made that remark, if anything?

A Well, that it was less likely that the fund could recover a full $20 million than ~~the~~ that Welch could recover $3 million.

Q Because the firm might be deemed to be sophisticated?

A Because of -- yes.

Q Did you understand why or how the fund might be deemed to be sophisticated?

A Only because it was an investment advisor.

Q He certainly wasn't meaning that you, Mr. Laun, had any expertise in making investments, right?

A No.

MR. SOUTHER: I object to the form of the question as to what Mr. Souther meant or didn't mean. You can only ask the witness what he understood me to say.

MR. TERSIGNI: Thank you, Mr. Souther.

BY MR. TERSIGNI:

Q You didn't understand that Mr. Souther was suggesting that you, Mr. Laun, had any expertise in making investments, did you?

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: You may answer.

A No.

Q And what you understood was that because the firm had an advisor that was a professional, that it might be deemed to have been more sophisticated than the plaintiff in the Welch action; isn't that right?

MR. SOUTHER: He answered that affirmatively three times.

Q And you also understood that an advisor uses its sophistication to make independent research and analysis prior to recommending an investment?

MR. SOUTHER: I object to the question. Would you please tell us what that has to do with the good faith or the relationship between the directors and the Directors Qualifications Committee?

MR. TERSIGNI: Mr. Souther, this statement and this whole line is right in the minutes of the December 18th meeting of this quorum, as far as I'm concerned, and it goes very, very directly to the relationship between this gentleman and the advisor, and specifically Mr. Haire, who, in addition to being a defendant, is also a member of the Qualifications Committee, and indeed, is a member of the very committee that was extant when Mr. Laun became a director.

MR. SOUTHER: I hear what you say and I don't think it's at all responsive to my request for elucidation.

MR. TERSIGNI: All right.

Would you answer, please?

MR. SOUTHER: Let's please hear the question.

(The pending question was read by the reporter.

A Generally, yes.

Q Look at as much as you want, but I'm directing your attention to what I read to you.

A Just to this paragraph?

Q Yes. But you can read the whole thing or read my whole file if you like.

MR. SOUTHER: I don't think that's necessary. The witness has asked. Are you going to ask him a question or do you just want him to read?

MR. TERSIGNI: I've called his attention to that.

MR. SOUTHER: Why don't you ask him a question and he can see how much he ought to read.

Q Have you looked at that, Mr. Laun?

A Yes.

Q My question to you is, is it true, is it true as stated in these minutes that on January 6, 1975, in the course of your deliberations as a member of this quorum, you reviewed the circumstances surrounding the purchase of the Penn Central commercial paper? Is that a true statement?

A Yes.

Q And did you review those circumstances because you considered them to be relevant to the decision you had to make with respect to the Lasker action?

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: You may answer.

A Yes.

Q And in the course of reviewing those circumstances, did you inquire what,if any, independent research and analysis Anchor had made prior to recommending that purchase?

MR. SOUTHER: On January 6th?

A We went through the entire list of circumstances. In other words, the fact that they relied upon Standard & Poor's prime rating was considered responsive in that area.

Q My question is, did you inquire with respect to whether or not Anchor made any independent research and analysis prior to recommending that purchase?

MR. SOUTHER: I ask you, Mr. Tersigni, are you saying did he inquire on January 6th? You've pointed to the minutes of January 6th.

MR. TERSIGNI: Yes. My question relates

to January 6th, or at any point during the deliberations or investigation by the quorum, from the date that it was constituted on or about July 24, 1974.

MR. SOUTHER: Again, are you saying did he personally inquire, did the quorum inquire, did Judge Fuld inquire?

MR. TERSIGNI: Did he personally or any other member of the quorum, to his knowledge.

A I did not personally.

Q Do you know whether Anchor made any independent investigation or analysis?

A I know of no independent investigation or analysis that was made.

Q Do you consider that relevant to whether or not they should be sued?

MR. JOSEPH: Again, repeat the objection, this goes beyond the scope of the discovery.

MR. TERSIGNI: I understand.

Answer the question, please.

A No. Because we were convinced that they had exercised what we felt was enough investigation into it.

Q By relying on Goldman, Sachs?

A And its willingness to repurchase.

Q Did you believe --

A And the ~~Standard & Poor's situation.~~ Dun & Bradstreet rating.

Q Did you believe that independent investigation by the advisor was unnecessary?

MR. SOUTHER: I object to the question and I'm going to instruct the witness not to answer. You're going far beyond the scope of the inquiry that Judge Werker said. We'll be here forever if you go through absolutely every belief that he may now have about what advisors should or should not do. A simple inquiry that the judge has allowed is the question of the relationship between these directors and the Directors Qualifications Committee.

You're far, far afield from that.

MR. TERSIGNI: Mr. Haire is on the Directors Qualifications Committee. Mr. Haire is the advisor. Either himself directly or his corporation Anchor. The statement about reviewing the circumstances surrounding the purchase, that is not my statement. That is a statement that appears in the minutes of the very meeting on January 6th when this decision was made. These gentlemen said it was relevant, and I'm trying to inquire.

MR. POLLACK: Can we please proceed?

MR. TERSIGNI: Do you direct him not to answer?

MR. SOUTHER: I have.

MR. TERSIGNI: Could I have the minutes back.

BY MR. TERSIGNI:

Q Mr. Laun, would you describe for us generally what the nature of the relationship has been between you and Mr. Phillips from, I believe you said 1948?

A Yes.

Q When you first met him?

A Certainly.

MR. POLLACK: Can't we in the interest of the individual involved call him Dr. Phillips, which is his correct name?

MR. TERSIGNI: I have no objection to calling him Dr. Phillips.

Q Are you a doctor, Mr. Laun?

A No.

Q I'd be happy to call you doctor if you are. Do you have any other titles that you'd like to be addressed by?

A Honorable.

Q I'd be happy to. Do you want me to call you Honorable?

A No. No.

Q Would you answer the question, please?

A Certainly.

I met Dr. Phillips in 1948, when I went to become assistant to the president of Bates Manufacturing Company, which was Maine's largest industry. My job was to be in charge of community and industrial relations for the company.

As such, I was thrown into a wide number of acquaintances throughout the state.

Dr. Phillips was president of Bates College at that point, and he also was working quite hard on town and gown things, the relationships between the university and the community. And so we would meet frequently at Chamber of Commerce meetings, at Community Chest meetings, at YMCA meetings, at Lewison Development meetings, and that sort of thing.

I left Maine in 1955 to go to New York.

I don't think I saw him for about ten years or so in the interim.

I was doing some work with the Sperry and Hutchinson people. Dr. Phillips was on the Sperry and Hutchinson board and our acquaintance got renewed when he came down to the Sperry Hutchinson board meeting, and we saw each other I'd say, oh, gosh, that's fourteen or fifteen years now, that I think of it, after the time I had seen him.

During this period I had dinner with him once, and then after, of course, I got on the Anchor group of mutual fund's board, I've been seeing him once a month.

Q Do you consider your relationship with Dr. Phillips to be social as well as business?

A I would say --

MR. POLLACK: I object to the form of the question. I think the witness has ~~said~~ set forth~~with~~ the nature of his relationship in factual detail. You're now asking him to characterize that relationship.

A I have seen him socially. It certainly started out completely as a business relationship, but I have a great difficulty in drawing a line as to what's a business and what's social when you see people.

Q What I'm asking you is,do you consider him to be a social friend as well as a business acquaintance?

A I consider him to be a friend.

Q Did Dr. Phillips suggest to you that you become a director of the Anchor funds?

A Yes. He asked me if I would be interested in being nominated?

Q And could you describe the circumstances under which he made that request or asked that request of you?

A Yes.

I had resigned from Celanese Corporation in the spring of 1971. I was interested in broadening myself and making contributions. Dr. Phillips mentioned to me that there was an upcoming opening on the Anchor board and asked whether or not I would be interested -- Anchor group of mutual fund's board, and asked if I would be interested in standing for election. And I said that I would.

Q Did Dr. Phillips tell you he thought you'd make a fine director?

A Yes, he did.

Q Did he explain more specifically why he thought you'd make a good director?

A Yes. I think he felt that I had 25 years of business experience, and could contribute a knowledge of textiles, chemicals, man-made fibers, marketing, labor relations, public relations, and other assorted skills to Anchor.

Q And he told you that?

A Not in that detail.

Q What, if anything, did you say to him when he said this to you, other than you'd be interested?

A I have no specific recollection of what I said other than I would be interested.

Q As of that time, had you had any experience with mutual funds?

A I have been an investor in mutual funds.

Q Other than that?

A Not as -- not as a director.

Q Did you ask him what duties you would have as a director of a mutual fund or group of mutual funds?

A Yes.

Q What did he say?

A I have no specific recollection of the exact things that he said.

Q What understanding did you have at or about this time as to what your duties would be as a director?

A My understanding is that we would pass on and make dividend policy, that we would monitor the performance of the funds that we were to be directors of; that we would be the ones who would choose the investment advisor, and generally supervise the contract between the funds and the investment advisor; that we would monitor procedures of the funds and that we would review the investment decisions that were made by the Fund.

Q What did you understand you would do in reviewing investment decisions?

A I did not know the form of it until I became a director.

Q What did you learn at that time with respect to what specifically you would do in reviewing investment decisions?

A I learned that we would look at the decisions that had been made during the previous month; that we would comment on whether or not we felt the group was heading in the correct direction, both as to the individual stocks that they had purchased, or to the industries that they were purchasing them in, or to the timing of the purchase within those industries.

Q Was it your understanding that as a director you had an obligation to make a review of the investment decisions made at the suggestion of the advisor?

MR. POLLACK: Object to the question as calling for a legal conclusion.

MR. SOUTHER: And at what time are you asking for this understanding?

MR. TERSIGNI: As of the time he became a director and up to and including January 6, 1975.

MR. SOUTHER: Would you read back the question for my benefit, please.

(The last question was read by the reporter.)

A Yes.

Q You have tried to live up to that obligation; haven't you, Mr. Laun?

A Yes.

Q Did you inquire whether any of the directors named as defendants made such a review with respect to the Penn Central investment?

A No.

Q Did you feel they had an obligation to make such a review?

MR. SOUTHER: I object to that question as far beyond the scope of the inquiry here.

MR. TERSIGNI: You may answer.

MR. SOUTHER: I instruct the witness not to answer as to what the directors should have done. And what their legal obligation was when they were directors at or about the time of the Penn Central purchase.

MR. TERSIGNI: Well, this director, apparently made a decision that these gentlemen should not be sued, and I'm simply trying to find out whether he made any attempt to find out whether in his opinion they did what they were supposed to do.

MR. SOUTHER: I think he's already testified that he did determine that as far as he was concerned there was no wrongdoing, and he's told you he's looked extensively to what Judge Fuld analyzed and reported.

MR. TERSIGNI: You've just directed him not to answer. He hasn't answered that question.

MR. SOUTHER: I don't know what you're saying now.

MR. TERSIGNI: All right.

Q Did you make any attempt prior to proposing that the lawsuit be dropped against all of these directors, that are named as defendants in the Lasker action, did you make any attempt to find out whether they had discharged what you considered to be an obligation to review investments as to the Penn Central matter?

MR. JOSEPH: Again, object on the ground that you're going into the question of the correctness of the business judgment exercised.

MR. TERSIGNI: No. I'm simply asking whether he made any inquiry.

Q Did you make any such inquiry?

A I made no inquiry.

Q Did anybody else to your knowledge?

A No.

Q At the time you became a director, Mr.

Laun, did you know any of the then directors of any of the Anchor funds?

A Only Dr. Phillips.

Q Did you know that there was a Directors Qualifications Committee?

A No.

Q Were you ever interviewed by the Directors Qualifications Committee?

MR. SOUTHER: Object to the question. How could he be if he didn't know such a committee existed?

MR. TERSIGNI: He may have found out later when he was interviewed, if he was interviewed. That's why I'm asking him the question.

Q Were you ever interviewed by the Directors Qualifications Committee?

MR. SOUTHER: I object to the question.

MR. TERSIGNI: You may answer.

A I was interviewed without knowing that there was a Directors Qualifications Committee.

MR. TERSIGNI: See, Mr. Souther.

MR. SOUTHER: See, Mr. Tersigni.

Q Would you explain how that came to

pass?

A I was interviewed -- Dr. Phillips asked me to meet Harry Burks to talk about whether or not I would be a good addition to the group of directors that were in the Anchor group of mutual funds, and I was aware of the fact that a decision to go forward to the board would certainly in part rest with whatever those two gentlemen had decided.

Q That is Dr. Burks and Dr. Phillips; is that right?

A I don't know that it's Dr. Burks.

Q Well, I don't want to upset Mr. Pollack. Is it Dr. Burks?

MR. POLLACK: It is Dr. Burks.

THE WITNESS: All right.

Q What about Mr. Haire?

MR. SOUTHER: Object to the form of the question.

What about him?

Q Was it your understanding that Mr. Haire would have anything to say along with Doctors Burks and Phillips?

MR. SOUTHER: Object to the form of the question.

Q With respect to whether you would submitted to the board as a potential nominee?

MR. SOUTHER: Object to the form of the question.

MR. TERSIGNI: All right. Answer it anyway.

A I'm confused. If he's objecting to the form --

MR. SOUTHER: The vice of it is he's saying what was your understanding. He hasn't established whether you had one or not. That's the point.

A It was --

MR. SOUTHER: He may want to rephrase it now that he understands what my objection is.

MR. TERSIGNI: Okay.

Q You've already told us that it was your understanding that Dr. Phillips and Dr. Burks would have a say, I think you said, as to whether or not your name would be submitted to the board. Is that a fair statement?

A Correct.

Q Did you have any understanding as to

whether or not Mr. Haire would also have something to say about that along with Doctors Burks and Phillips?

A No.

MR. TERSIGNI: I'd like to state for the record I have not gotten any minutes of the Qualifications Committee, to my knowledge, relating to any interview or consideration of Mr. Laun as I had with the other four members of the quorum.

Now, if that's because there was no formal meeting, fine. But if there are such minutes in existence, I call for their production.

MR. SOUTHER: I have inquired as recently as yesterday and been advised that there were no minutes prepared.

MR. TERSIGNI: Okay.

MR. POLLACK: However, I would point out that there is a document that was produced for you, I think, which discusses the possibility of Mr. Laun becoming a director.

MR. SOUTHER: Right. There were excerpts from minutes of the board itself, which have been produced, and I believe have been identified.

MR. TERSIGNI: Yes. That is correct. That is Exhibit 5.

Q Mr. Laun, who oriented you as to what your duties would be as an outside director prior to your being nominated?

MR. POLLACK: Object to the form of the question.

A It was an evolutionary process, partly by my original discussions with Dr. Phillips, partly by the discussion with Dr. Phillips and Dr. Burkes and partly John Haire. At a later meeting.

Q When did you first meet Mr. Haire?

A It was sometime just prior to my first meeting on the board.

Q Was that after you'd been nominated?

A I am not sure of what my status was. It was before I was -- if the word is elected. I'm not sure of the word.

Q What, if anything, did Mr. Haire tell you on the subject of what your duties would be?

A He more or less reviewed some of the things I'm talking about, but spent most of his time talking about what each of the services were that were provided by the advisor for the funds so that I could be aware of what was involved in monitoring.

Q Did he tell you that part of your duties would be to supervise investments recommended by Anchor?

MR. SOUTHER: I object to the question.

MR. TERSIGNI: You may answer.

MR. POLLACK: Object to the form of the question.

A No. I never had the feeling that I was to supervise the investments.

Q Did he tell you that part of your duties would be to review investments recommended by Anchor?

MR. SOUTHER: Object to the form of the question.

A Yes. Yes.

Q Did he tell you how you were expected to do that?

A He showed me a minute, in the sense of a meeting, and showed how the group reported the stocks and bonds that were in the individual funds.

Q He explained the procedure to you?

MR. SOUTHER: I object to the form of

that question.

Q Did he explain the procedure by which the directors reviewed investments recommended by Anchor?

A He showed me the sheet that is in the monthly minutes that will list, for example, that Fundamental Investors bought these stocks and bonds during this period. And said that is the material we present to the directors.

Q And that sheet showed the name of the particular securities purchased?

A Right.

Q Is that right?

A Yes, it did. It did not show commercial paper.

Q After you met with Dr. Burks, and Dr. Phillips, was your name submitted to the board of directors as a suggested nominee, if you know?

A It must have been. I was elected.

Q It's certainly your understanding that that was done; isn't that right?

A Yes.

Q And is it your understanding that the board of directors approved you and caused your name to be placed on the slate of directors for election in 1971?

A Yes.

Q And who, if you know, were the directors then sitting on the board who approved that action?

A I don't recall who was at the meeting that approved the action.

Q Do you know how many of them are defendants in the Lasker case?

A No.

Q I have the caption here. I'd like to go down it with you. Mr. Burks certainly was on the board and approved that, at least, that's your understanding; isn't it?

MR. SOUTHER: I object to that. He just said he doesn't understand who approved his election to the board at that meeting.

MR. TERSIGNI: He said the directors did.

MR. SOUTHER: Right. But he has just told you he doesn't know who was at that meeting that gave such approval. Therefore, it's totally improper for you to say to him Burks was there and he approved it.

MR. TERSIGNI: I didn't say anything

witness knows or what his understanding was --

MR. POLLACK: He already testified that he doesn't know who were there or how they voted on his nomination.

MR. TERSIGNI: Let me ask my question and let's stop it with all the speeches.

MR. SOUTHER: We're not going to stop it. We're going to have a clear record and if you want to keep this up --

MR. TERSIGNI: It's not going to be clarified by all the speechmaking. You've asked me to break up a compound question.

MR. SOUTHER: Yes.

MR. TERSIGNI: I'll do that.

MR. SOUTHER: Good.

MR. TERSIGNI: Even though I think the witness can cope with the complexity of that question.

BY MR. TERSIGNI:

Q Is it your understanding that Dr. Burks was a director at the time you were approved as a nominee?

A Yes.

Q Is it your understanding that he approved you as a nominee?

A I don't know specifically.

Q Do you have any understanding on that subject?

A Inasmuch as he was a part of the group that interviewed me, I must assume, but I don't know.

Q What about Mr. Burr?

MR. SOUTHER: What about him?

Q Was he a director at that time?

A Yes.

Q Did he approve you?

A I don't know.

Q Was Mr. Chalker a director at that time?

A I don't recognize the name.

Q Do you know whether he approved you?

A I never heard of Mr. Chalker.

MR. POLLACK: Mr. Tersigni, Mr. Chalker was dead at the time.

MR. TERSIGNI: Mr. Chalker was dead in 1971, is that what you're saying, Mr. Pollack?

MR. POLLACK: I think.

MR. TERSIGNI: You know, you hasten to correct me and now you think. I mean, what's the purpose, unless you're trying to embarrass me.

MR. JOSEPH: The question has been answered.

MR. TERSIGNI: Then why does he --

MR. SOUTHER: The question is irrelevant. Mr. Laun already said he doesn't know Mr. Chalker.

MR. TERSIGNI: Of course it's irrelevant. So why does counsel interject. And I don't think he was dead, by the way.

MR. POLLACK: I think you're correct.

MR. TERSIGNI: Thank you.

BY MR. TERSIGNI:

Q Mr. Haire certainly was alive and on the board, wasn't he?

MR. SOUTHER: I object to the form of that question.

Q Did he approve you as a director?

A I don't know.

Q Mr. Hopkins?

A I don't know.

MR. SOUTHER: What's the question?

MR. TERSIGNI: Same questions.

MR. SOUTHER: Was he on the board?

MR. TERSIGNI: Let's expedite this, Mr. Laun.

BY MR. TERSIGNI:

Q I'm handing you a caption of the action that names certain individual directors. To your knowledge, did any of those directors vote against you as a nominee for director?

A Well, are these all directors?

Q All of the individuals at one time or another were directors, okay? And my question to you is, do you have any knowledge that any of these gentlemen ever voted negatively on your nomination?

A No.

Q Do you have any understanding whether there were any dissenting votes on your nomination?

A No.

Q You certainly never heard that there were?

A Correct.

Q Did you make any attempt to inquire when you proposed that this lawsuit be dismissed, whether any of these defendants voted in favor of your becoming a director?

A No.

Q Did you consider that relevant?

A Totally irrelevant.

Q Did you think about it?

A No.

Q So you're saying now it's irrelevant?

A I just never thought of it. It would never have occurred to me.

Q Do you recall Mr. Haire being questioned at the December 18th meeting of the quorum?

A Yes.

Q Do you recall any discussion by Mr. Haire as to what implications a $20 million judgment against Anchor would have with respect to Anchor's net worth?

A Yes.

Q Do you recall his saying in substance that that would have a very serious impact on Anchor?

A Yes.

Q Were you concerned about what impact it would have on Anchor?

A We weighed that along with the other elements that I described.

Q Did you consider what impact a $20 million judgment would have on Dr. Phillips?

A No.

Q Did you consider that relevant?

A I think I testified that we were

considering the impact upon the shareholders of the Fund, and were not sorting among all of those people as to who they were.

Q And the same is true of Mr. Haire, you didn't consider what impact a $20 million judgment would have on him?

A That's correct.

Q Do you consider that relevant?

A We considered relevant the impact upon our advisor, because of its relationship to the stockholders of Fundamental. But we did not consider any of the individual cases as separate from the overall.

Q Some of the individual defendants named in the Lasker action are no longer with the Fund. Isn't that right?

A Yes.

Q And they were not with the Fund as of January 6, 1975, some of them; isn't that right?

A Right.

Q For example, Mr. Monroney; isn't that right?

A Yes.

Q Any others that you can recollect were no longer with the Fund as of the date of your decision?

MR. SOUTHER: Aside from Mr. Chalker?

A Mr. Wade.

Q Anybody else that you can recall?

MR. SOUTHER: He's looking at the caption you've just shown him.

A I'm not sure technically whether Dr. Kemmerer was or was not at that point. He is not now, but I'm not sure at what point in time he did not become --

Q Would I be correct in saying that at least five of the individuals listed as defendants were no longer with the Fund as of January 6, 1975?

MR. SOUTHER: I object to the question.

MR. TERSIGNI: You may answer.

MR. SOUTHER: Do you care to point out the five? You've asked him to agree with a conclusion. Do you care to give him the basis on which you reached that conclusion?

MR. TERSIGNI: I don't. I care to know whether he agrees with that statement. That's what I care to know.

THE WITNESS: Give me that statement

again.

Q Would I be correct in saying that at least five of these individuals were no longer with the Fund on the theory that the five disinterested directors had all replaced somebody?

MR. SOUTHER: That is not necessarily correct.

MR. TERSIGNI: Then let him disagree.

A I've got at least three. The question of Mr. Hopkins, was he a director?

Q At one time he was, I believe.

A Yes. I see.

Q Are you saying there are at least three or --

A Well, my confusion was with regard to Mr. Hopkins, who I never considered a director.

Q All right. I believe he was. I don't want to make any misstatements, but I think at one time he was a director.

A Apparently before I got there.

Q Yes.

A Yes.

Q Did you give any consideration to whether the continuance of the action against those directors who were no longer with the Fund would be disruptive?

A No.

Q You didn't think about that?

A Correct.

Q Would you say that it would have been disruptive as to them?

MR. SOUTHER: I object to the question and what he would now say as to whether it would be disruptive as to people who are deceased or are no longer with the Fund is totally irrelevant. I'm going to instruct him not to go down that road of inquiry.

Q In proposing that the action be dismissed even as against directors who were no longer with the Fund, what consideration did you take into account there?

MR. SOUTHER: Mr. Tersigni, he has told you the considerations he took into account. He's repeated them for you. I don't see any value in repeating all the thoughts he had in mind of which he expressed to you, to your displeasure.

MR. MALLIS: You're making assumptions.

MR. TERSIGNI: I take it that's a

direction not to answer?

MR. SOUTHER: I'm going to direct the witness not to go down that road again. He has told you fully, fairly and completely.

Q Mr. Laun, have you told us fully, fairly and completely all of your reasons for proposing dismissal as to those directors who were no longer with the Fund, and only those I'm talking about now?

MR. SOUTHER: He's told you he did not segregate out individuals. Come on, this is a game now, Mr. Tersigni, where you're trying to put words in his mouth and be tricky. It's not a game. This is a lawsuit.

The man has sworn to you. He's told you repeatedly, he did not segregate out individuals. He viewed the lawsuit as a lawsuit. And that is the basis on which he made his resolution.

MR. TERSIGNI: I'm simply asking him whether he has now told us fully, fairly and completely, in the words of counsel, all of his reasons as to those individuals who were no longer with the Fund. I'm trying to give the witness a chance to supplement his answer, if he wants to, if he's told us fully, fairly and completely, the answer is yes.

Could I have an answer or do you direct him --

MR. SOUTHER: Which question are you going to ask him now? You've changed your question several times.

MR. TERSIGNI: I'll try to rephrase it and hope there is not another objection.

Q Have you now told us, Mr. Laun, fully, fairly and completely all of the reasons you had for voting for dismissal as to those individuals who were no longer with the Fund in any capacity as of January 6, 1975?

MR. SOUTHER: Object to the question.

MR. POLLACK: Object to the form of the question. I think it's highly misleading. I think the use of your adverbs and also I think the segregation out of these particular people where the witness has clearly indicated that he did not focus on individuals, is a very improper form of question.

MR. TERSIGNI: You may answer.

A As I said before, to the best of my recollection, we had fully considered reasons for making the motion that was made, but did not think of it in separate parts. It was all on the one issue.

Q When you proposed dismissal, did you believe that the plaintiffs' claim was without merit?

A Yes.

Q Was that belief an important consideration to you?

A It was one of the considerations.

Q Was it important?

A Yes.

Q Was there any other consideration that you considered more important?

A I don't think we ever rated them ~~with~~ -- we considered the total impact of all of these, and I recall no weighing of the comparative importance of each one of the factors.

Q If you believed that the claims had merit, would that have made any difference to you?

MR. SOUTHER: Object to the question as hypothetical.

MR. POLLACK: As counterfactual hypothetical.

MR. TERSIGNI: You may answer.

THE WITNESS: Counterfactual hypothetical?

MR. POLLACK: Which is to say it's not in accordance with the facts, and therefore, it's a meaningless speculation. I object to this form of question.

MR. TERSIGNI: You may now answer and -- well, you may now answer,hopefully.

THE WITNESS: I better have the question again.

(The pending question was read by the reporter.)

MR. JOSEPH: If you have an answer to that question.

MR. SOUTHER: Yes, you may or may not.

A I think the only way that it can be looked at was the totality of the things that we had before us. I find it impossible to dissect out individual parts.

Q Did you read Judge Fuld's report, Mr. Laun?

A Yes.

Q Did you read both his reports?

A Yes.

Q Did you try to read them carefully?

A Yes.

Q Did you read them more than once?

A Yes.

Q Did you have any questions about anything that you read in those reports?

A Yes.

Q Do you recall whether you had many questions or few questions?

A Few questions.

Q Do you recall what those questions were?

A I had questions about the diligence with which Anchor had ~~purchased~~ pursued the non-buy back by Goldman, Sachs. I had questions in regard to how many other people also had Penn Central paper in addition to Fundamental. I had several questions about the ~~filing~~ timing of different events and the sequence of them.

That's all I recall rather quickly.

Q Did you communicate directly with Judge Fuld?

A At that meeting?

Q Other than at the formal meeting of December 18th, did you?

A No.

Q Do you know whether Judge Fuld made a factual investigation?

A I certainly believe he did.

Q And do you know whether in the course of that investigation he requested certain files of Anchor?

A I do not know what steps he took.

Q Do you know whether he reviewed any files, either of Anchor or Fundamental?

A I remember in his statement that he indicated he had made an exhaustive study, but what things he reviewed, I don't know.

Q Do you know what, if anything, Mr. Wickers did with respect to Judge Fuld and his investigation?

A No.

Q Did any member of the quorum ever suggest that the plaintiffs or their attorneys be contacted to ascertain what, if any, evidence they might have?

A I don't recall.

Q Do you think that was relevant?

A I don't know.

Q Did you believe that both sides of the question should be examined?

A Yes.

Q If plaintiffs or their attorneys had

relevant evidence, would you have wanted to have had it prior to making your decision?

MR. POLLACK: I take the strongest exception to this form of questioning.

MR. TERSIGNI: I'm sure you do, Mr. Pollack.

MR. POLLACK: They had the complaint. Judge Fuld knew what was in the complaint. So did these directors. I don't think that the question that you ask is an appropriate one and is certainly outside the scope of discovery here.

MR. TERSIGNI: Would you answer the question, please. The question is, if the plaintiffs or their attorneys had relevant evidence, would you have wanted that evidence in making your decision?

A Well, that was -- that is one of the reasons, that we would assume that Judge Fuld would go into all of the relevant evidence for us.

Q Did you assume that Judge Fuld contacted the plaintiffs or their attorneys?

MR. SOUTHER: I object to that question.

A No.

MR. SOUTHER: We don't want assumptions.

Q Did you assume that Judge Fuld would have contacted the plaintiffs or their attorneys to obtain any relevant evidence?

MR. SOUTHER: I object to that question on what he assumed or didn't assume. He's testified that he relied on Judge Fuld to make a full inquiry.

MR.TERSIGNI: You may answer.

A We hired Judge Fuld to look into this for us, and we did not make any independent inquires of that nature.

Q You don't know who Judge Fuld interviewed, do you?

A No.

Q And you don't know if the plaintiffs had any evidence, whether Judge Fuld asked for it, you don't know that either, do you?

A I have no specific knowledge of all the steps that Judge ~~Fund~~ Fuld took to arrive at his opinion.

Q And you don't know what files, if any, of Anchor or Fundamental Judge Fuld looked at; isn't that right?

A That's correct.

Q And you don't know if the Judge requested such files, who furnished them to him, you don't know that either?

A That's correct.

Q But it wasn't you; right?

A That's correct.

Q And to your knowledge, it wasn't any other member of the quorum; right?

A I don't know.

Q Mr. Laun, do you recall how much compensation you were paid for serving as a director in the years 1971, '72, '73, '74 and '75?

A About 10,000 a year. I don't know the individual parts.

MR. TERSIGNI: I have already requested, I believe, that information, and it's my understanding counsel will give it to us.

MR. SOUTHER: You understand the way you put the question, '71 would not have been the same.

MR. TERSIGNI: It wouldn't be a full year because he became a director in the fall.

MR. SOUTHER: Right.

MR. TERSIGNI: I understand that.

THE WITNESS: At the rate of about 10,000 a year.

Q And that may vary depending upon how many committees you worked on and so on; is that correct?

A Yes. And how many meetings I attended.

Q And how many meetings.

A Yes.

Q But that was an approximation that you're giving us?

A Yes.

MR. TERSIGNI: And I renew my request for that information.

Q Do you know who hired Judge Fuld?

A We did, the five outside directors.

Q Who came up with Judge Fuld's name?

A The name was first -- emerged at our July 24th meeting.

Q Was that Mr. Wickers who suggested Judge Fuld?

A I don't know who suggested -- Mr. Wickers mentioned Judge Fuld and some other people at the time we were discussing what steps the board should next take in this whole issue.

Q Who else did he mention besides Judge

Fuld?

A Whitney --

Q North Seymour?

A Right. That's it.

Q Anybody else?

A That's the only one I recall.

Q And did he say it was up to the quorum whether it would be Mr. Seymour or Judge Fuld?

A It was clearly up to the quorum. I don't recall whether he said or it was or it wasn't, but --

Q Did he suggest one or the other?

A No.

Q And he left it completely up to the five of you?

A He gave us a rundown of the qualifications and availability and left it all up to us.

Q And you selected Judge Fuld over Mr. Seymour?

A Yes.

Q And did he have reasons for selecting Judge Fuld over --

A Whether over Seymour is not --

Q Well, in lieu of Mr. Seymour.

A In lieu of --

Q And that was after you heard the qualifications of both?

A Yes.

Q And you felt that you should vote for selecting Judge Fuld?

MR. SOUTHER: Object to that question. It's totally contrary to what the witness has said.

No foundation for the statements, at least two of the things you have in your question.

Q Did you vote for Judge Fuld?

A There was no formal vote taken.

Q Did you express the view that Judge Fuld should be retained?

A I don't recall specifying the view.

Q Did you communicate your thought that it should be Judge Fuld that should be retained?

A An agreement emerged.

Q How did you communicate with the other members of the quorum on this point?

A The availability and attributes were discussed back and forth, and out of all this Judge Fuld emerged as the one that looked best to us.

Q You were in favor of Judge Fuld being

retained?

A Yes.

Q Rather than Mr. Seymour?

A You added the rather than Mr. Seymour.

Q You weren't in favor of hiring both, were you?

A No.

Q You were in favor of hiring one of them; is that right?

A Correct.

(Continued on page 117.)

Q And you felt that the one that should be hired was Judge Fuld; is that right?

A We certainly felt that Judge Fuld should be hired.

Q I'm asking you, Mr. Laun, you. You reached the conclusion that Judge Fuld should be hired?

A Yes.

Q And not Mr. Seymour?

A Yes.

Q Did you communicate or express this thought at the meeting?

A I don't recall myself expressing the thought at the meeting.

Q Did you participate in the decision?

A Yes.

Q How did you participate?

A I don't recall the way it emerged but I remember being in agreement. But I do not --

Q Isn't what happened --

MR. SOUTHER: Excuse me. But what?

A But I do not remember the form of arriving at that agreement.

Q Would it refresh your recollection if I told you what happened was Mr. Wickers suggested Judge happened is that Mr. Wickers came to this meeting; suggested to you that he had ascertained the availability of Judge Fuld, that Judge Fuld had confirmed he was willing to advise the quorum, and that he would make the arrangements if the quorum so desired, and the quorum said fine? Isn't that in substance what happened?

MR. SOUTHER: I object to the question. There are six parts to the question and I'm not going to permit any witness to answer a six-part question. So I'll instruct him not to answer that kind of a characterization which doesn't even purport to be a question.

Q Why did you decide that it should be Judge Fuld that was hired rather than Mr. Seymour?

A There were two main reasons for me. One was availability, and these are not necessarily in importance, and two, the fact that he was a judge with a fine reputation, I thought we needed a judicial temperament to give a full and fair independent investigation here to help us as directors to arrive at our proper decision.

Q Did you believe that Mr. Souther would also advise you in this connection?

A Yes.

Q And did you believe you should have two lawyers?

A We felt the need for additional outside counsel.

Q Did you discuss who would pay for it?

A No.

Q Did you feel that was relevant?

MR. SOUTHER: Objection to the form of the question. There is no evidence that he had any feeling about it one way or the other.

Q Did you feel that that was relevant?

MR. SOUTHER: Objection to the form of the question.

MR. TERSIGNI: You may answer.

A We --

MR. SOUTHER: How do you feel whether something is relevant?

A We felt that we knew that the fund --

MR. TERSIGNI: Somebody may have kicked him.

MR. SOUTHER: A feeling is emotion.

Q Did you believe it was a relevant matter?

MR. POLLACK: Let him answer the question that is pending.

Q You believe there should be two counsel, you said, there should be an outside counsel in addition to Mr. Souther; is that a fair statement?

A Yes.

Q Did you believe that it was relevant who would pay for that second counsel?

MR. SOUTHER: Mr. Joseph says relevant to what?

MR. TERSIGNI: Relevant to the decision that there should be a second counsel, obviously. I mean, you know, we're not idiots here.

MR. JOSEPH: I don't think I am but I'm having difficulty with the question.

MR. TERSIGNI: Of course not. I think the witness understands that question. Don't you, Mr. Laun?

MR. SOUTHER: He didn't before.

A If we're hiring counsel, it's assumed that we're going to pay for the counsel. That's where I'm confused.

Q You assumed that you would pay for it, that is, the fund?

A Yes.

Q Did you believe it relevant to know how much it might cost?

MR. SOUTHER: Objection to the form of the question as to whether he had any belief on July 24, 1974.

MR. TERSIGNI: You may answer.

A I don't recall giving any consideration to the cost.

Q Do you believe today that that was a relevant fact?

A No.

Q Why not?

MR. JOSEPH: Is there a claim in this case, for my own education, for a waste of corporate assets in the hiring of Judge Fuld?

MR. TERSIGNI: We are not claiming waste. The reason I'm inquiring is very simply this, Mr. Joseph, the point is made that these were disinterested directors; that they acted with the best interest of the shareholders in mind, and so on and so forth. And I'm simply inquiring whether or not these gentlemen had the interest of the shareholders in mind to the extent of being concerned as to how much this would cost and who would pay for it. Very simple.

MR. SOUTHER: And he's answered the question that it didn't occur to him what it would cost, did not view that as relevant and thought it appropriate and assumed that the fund would pay, and when they hired the best man available, that was in the best interest of the shareholders.

Can we move on to something else?

MR. TERSIGNI: We did move on. I then asked him did he consider it relevant today, and without objection from counsel, the answer was no, and my question now is why not.

MR. SOUTHER: Mr. Joseph's question is what has it got to do with the issue.

MR. TERSIGNI: Would you answer the question, please?

A Because we were hiring a man of integrity. We needed somebody to help us with a fairly major decision. And I believe there was an assumption that we would be charged fairly for that.

Q When Judge Fuld's bill came in, were you consulted about it?

A Consulted?

No.

Q Did anyone discuss it with you?

A Yes.

Q Who discussed it?

A Mr. Wickers.

Q What was the discussion that you and he had?

MR. JOSEPH: I object to the question as going completely beyond any permissible scope of discovery. You're now going solely into the question, I think, of the propriety of Judge Fuld's bill. And I don't see any relationship of that to the issues in this lawsuit.

MR. TERSIGNI: Mr. Wickers is an employee of Anchor. Mr. Wickers is the subordinate of Mr. Haire. Mr. Haire has already testified that he discussed with Mr. Wickers the selection of counsel. It has already been testified, albeit at sessions --

MR. POLLACK: Tony, what does this all add? Just ask questions.

MR. TERSIGNI: You are interrupting, Dan.

MR. POLLACK: I'm not. You're just making an extended statement.

only and --

MR. SOUTHER: Yes, you did, as a matter of fact.

MR. TERSIGNI: Read back my statement, please.

MR. POLLACK: Please, let's go on.

MR. SOUTHER: Ask the question again.

MR. POLLACK: Don't feel challenged from everything.

MR. TERSIGNI: Look, you directed him not to answer.

MR. SOUTHER: Nobody directed him not to answer on this yet.

Q What discussion did you have with Mr. Wickers about Judge Fuld's bill?

A Mr. Wickers brought in the bill for a decision regarding payment from the five directors, and we approved the bill.

Q What did he say?

A He said"Here's the bill."

Q That was it?

A He said Judge Fuld has presented his bill. And he told us the amount of the bill and asked us to approve -- whether we would approve payment.

Q Did he say that Judge Fuld presented the bill to him?

A I don't recall any more detail than that.

Q To whom was the bill addressed?

A I don't know.

Q Do you have a copy of the bill?

A No.

MR. TERSIGNI: I call for production of the copy of the judge's bill.

MR. SOUTHER: I'd like to see you ask Judge Werker to compel us to produce that one.

MR. TERSIGNI: I take it you refuse.

MR. SOUTHER: Unless you come up with some justifiable reason for that, I see no reason why I should produce it. If you want to persuade me otherwise, send me a letter and give me a justifiable reason. Thus far, you haven't.

Can we move on?

Q Was Mr. Wickers present at any discussions had among the disinterested directors or any of them?

A He was at the July 24th meeting, but not during all of it. He was not -- during the part we were alone, and I don't recall whether he was in the room at the time we had the other people I mentioned in.

Q Any other time that you can recall Mr. Wickers being present?

A The times I recall are at board meetings when we would be talking about dates of arrangements to get Judge Fuld,or his wife was ill, and we were concerned with getting on with it. It was that sort of discussions.

Q Do you know who conveyed to Judge Fuld what it was that he was being requested to give an opinion on?

MR. SOUTHER: Objection to the form of the question.

MR. TERSIGNI: You may answer.

MR. SOUTHER: There is no testimony that he was being asked to convey an opinion on anything.

MR. TERSIGNI: He must have given his opinion unsolicited, I take it.

MR. POLLACK: I think you're characterizing his report as an opinion.

MR. SOUTHER: I think so.

MR. TERSIGNI: All right. I'll modify my question to that extent.

MR. SOUTHER: Thank you.

A You better give me the question again.

Q Do you know who it was that told Judge Fuld what it was that he was being asked to render a report about?

A Which report?

Q How many reports do you know about that Judge Fuld gave?

A Two.

Q Those two. Those are the ones I'm talking about.

A Right.

Q Who was it that told Judge Fuld the subject matter concerning which a report was desired?

A I don't know.

Q It wasn't you?

A No.

Q Was it any other member of the quorum?

A Well, there was a general -- we five agreed that he should do a full investigation and come up with recommendations. Now, how that was communicated to him, I don't know.

Q Wasn't it Mr. Wickers that communicated all of that to Judge Fuld?

A I have no idea whether it was Mr. Wickers or Mr. Souther or a combination of the two. I don't know.

Q How did you get the judge's reports?

A I don't know. I now recall that I received the December 5 report in the mail from Judge Fuld, and the December 18 supplement was distributed by hand at the meeting in Elizabeth on December 18.

Q You didn't get them from Judge Fuld?

MR. SOUTHER: Objection to that question.

Q Did you get them from Judge Fuld?

A I don't know. They came in an envelope. See my statement at p.131, l.7.

Q Was there a forwarding letter?

A I don't remember.

Q Would you have such a letter if there was one?

MR. POLLACK: The report itself is a letter. Mr. Tersigni, I point that the report itself is in the form of a letter from Judge Fuld.

A I can't recall.

MR. POLLACK: One must assume that Judge Fuld sent it to the directors.

MR. TERSIGNI: I'm not interested in assumptions, Mr. Pollack, or in your testimony, to be quite frank.

MR. POLLACK: You've been rude to everybody in this room this morning. Why don't you relax and take a deposition in the spirit in which it's indicated in the Federal rules?

MR. TERSIGNI: I've been trying.

I call for production of any forwarding letter that may have been sent to Mr. Laun with either of the judge's reports.

MR. SOUTHER: And I might advise you I'm not aware that there was anything other than the letters that have been produced to you months ago. Indeed, which were attached to our moving papers.

Q Do you recall where you were, Mr. Laun, when you received Judge Fuld's report?

A No, I don't. See my statement at p. 131, l. 7.

Q Do you know whether you were in Elizabeth, New Jersey?

A I don't know. See my statement at p. 131, l. 7.

MR. SOUTHER: Would it be helpful if you knew the dates of those reports?

THE WITNESS: The dates of receipt?

MR. TERSIGNI: No. One is dated December 5th.

THE WITNESS: Yes.

MR. TERSIGNI: And one is dated December 18th.

THE WITNESS: Yes.

A I don't remember whether I received them in the mail. I had the December 5th report available to me at the December 18th meeting. I don't remember how I got it. See my statement at p. 131, l. 7.

Q Prior to December 18, when was the last time that you were in Elizabeth, New Jersey?

A I believe it was at the previous, last previous board meeting.

Q That would have been in November?

A Yes. If I was at that board meeting. I'm not sure whether I was at that board meeting, You can check that.

Q But you weren't in Elizabeth in December other than for the December 18th meeting?

A No, I don't recall any other meeting.

Q And Judge Fuld's report is dated December 5th, his first report, and is addressed to the board at Elizabeth, New Jersey.

A Right.

Q Do you say that you received that report in Elizabeth, or that somebody sent it to you somewhere else?

A I don't remember. See my statement at page 131, l. 7.

Q When did you first find out, Mr. Laun, that you would be asked to participate in a decision regarding the Lasker action?

MR. POLLACK: Objection to the form of the question.

MR. TERSIGNI: You may answer.

A This came out of our discussion on July 24th.

Q That was the first notice that you had?

A Of this phase of the -- are you talking about this phase of the Lasker action?

MR. SOUTHER: He's asking is that the first notice that you had that you would be asked to participate in the decision as to what, if anything, to do about the Lasker action.

A There was some mention at prior board meetings, which I can't recall the detail. But I know there was prior discussions.

MR. POLLACK: I would ask that if the questioning go on, we now take a break. We've been at it for an hour and three quarters and it had been my understanding that we were going to complete a half hour ago.

How much more have you got to go? We've

been at this for a long time.

MR. TERSIGNI: I would say approximately ten more minutes of questions. I'm not going to estimate the objections.

MR. POLLACK: You did say at 12:00 o'clock that we were going to be finished by 12:24.

MR. TERSIGNI: I said I hoped that was true.

MR. POLLACK: If we're going to go on I'd like to take a short break.

THE WITNESS: I don't want to miss my plane here.

MR. TERSIGNI: I have at the tops another ten minutes of questioning. Okay?

THE WITNESS: Okay.

MR. SOUTHER: Did you understand the last question.

THE WITNESS: I'm not sure I did. The Lasker action having two phases to it.

Q Let me rephrase it.

When is the first time that you found out you would be asked to participate in a decision whether or not the Lasker action should be permitted to continue? Do you understand that?

A Yes. And what I can't recall is whether or not there were discussions on that a year or two years before this particular period.

Q You were a director in 1973 when the Lasker action was commenced, were you not?

A Yes.

Q And wasn't there a board meeting at which there was discussion as to whether or not application should be made to stay the Lasker action?

MR. SOUTHER: Mr. Tersigni, you know from prior depositions that we've instructed the witnesses not to go into the whole area of whether there should be a stay or not a stay. Are you going to go into that subject now, because I'm going to instruct him not to answer.

MR. JOSEPH: Off the record.

(Discussion off the record.)

MR. TERSIGNI: Will you read the pending question?

(The pending question was read.)

MR. SOUTHER: I've instructed him not to answer that.

Q Isn't it true, Mr. Laun, that prior to the time that an application was made to stay the Lasker action in 1973, you already knew that when the Goldman Sachs action was settled, or otherwise disposed of, a decision would have to be made by Fundamental's board as to what position to take as to the Lasker action?

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: You may answer.

A And what time frame are you talking about here?

Q 1973, at or about the time that the fund applied to the court to stay the Lasker action pending the outcome of the Goldman Sachs action.

Now, when that decision was made to apply for that stay, and at or about the time that the application was made, you knew that when the Goldman Sachs action was disposed of, a decision would have to be made as to what position to take as to the Lasker action?

MR. POLLACK: Objection as outside the scope of discovery.

MR. SOUTHER: Objection to the form.

Q Isn't that true?

THE WITNESS: Are you objecting to an answer or are you objecting --

MR. SOUTHER: No, I object to the question.

MR. TERSIGNI: You may answer.

MR. SOUTHER: And to the form of the question.

A I have no recollection of a period of involvement with the Lasker question until July 24th, although I remember seeing the Lasker question discussed. I do not recall any previous involvement and a decision-making process on the Lasker case.

Q Do you recall the fact that a stay was ordered in 1973?

A Only because on July 24th we were told that the -- we had 20 days, I believe, to take action.

Q Was that the first time that you found out that there had been a stay?

MR. SOUTHER: I object to that. Mr. Tersigni, I've given you some latitude, and now, as typically, you're going to try and drive a truck down a road that's irrelevant. I'm going to instruct him not to answer any questions. He's given you the best recollection he has of the events.

Q Do you recall ever expressing the view at a board meeting or otherwise that the Lasker action should be stayed until the Goldman Sachs action was disposed of?

MR. POLLACK: Objection.

MR. SOUTHER: I've objected before. I've instructed the witness not to answer. I advised you not five minutes ago that we're going to be consistent on that as we have in the other depositions.

I'd appreciate it if you'd allow this man to catch his plane and not go into questions that you know I'm going to object to.

MR. TERSIGNI: You may answer.

MR. SOUTHER: He can't answer. I've instructed him not to answer.

Q Have you ever visited Dr. Phillips at his home?

A Yes.

Q Can you estimate how many times?

A Since 1948?

Q Yes.

A Two.

Q Has Dr. Phillips ever visited you at your home?

A Yes.

Q How many times? Can you tell us?

A I'd ~~day~~ say about two.

Q Have you visited with any other director of any of the Anchor funds either at his home or at your home?

A No.

Correction. As a part of the board meetings in Arizona, where all the directors were -- we did go, to one of the directors' homes.

Q Which director -- I'm sorry, go ahead.

A Mr. Burr's home.

Q Would you describe --

A I've never been alone to any director's home.

Q Would you describe the circumstances which led to all of the directors' meetings in Mr. Burr's home on that occasion?

MR. SOUTHER: No. Could you tell us the date of that, Mr. Laun?

MR. TERSIGNI: It was obviously after '71, and it was before he decided Mr. Burr should not be sued.

MR. SOUTHER: You don't know that as a matter of fact. Would you please tell us the date.

MR. TERSIGNI: It's obvious.

MR. SOUTHER: Please tell us the date. You may learn something. Keep an open mind, Mr. Tersigni. It's possible.

THE WITNESS: February '75.

MR. SOUTHER: Okay. I object to it as outside the scope of the inquiry and after the date on which these directors made their decision.

MR. TERSIGNI: Let me see if I understand you, Mr. Laun.

Q Is it your testimony that on February -- did you say 5th, February 5th --

MR. SOUTHER: He didn't say 5th.

MR. TERSIGNI: What date in February?

MR. SOUTHER: He didn't say.

Q What date in February was it?

A The day of the board meeting.

Q In February 1975 --

A Right.

Q (continuing) -- which was several weeks

Q Would you explain the circumstances --

MR. POLLACK: He just did.

MR. TERSIGNI: You directed him not to answer, is what he did.

MR. SOUTHER: No. He gave the circumstances.

MR. TERSIGNI: He did not.

MR. SOUTHER: Well --

MR. TERSIGNI: You directed him not to answer, Mr. Souther, and I would like to know what the circumstances were.

MR. SOUTHER: It's irrelevant.

MR. POLLACK: I think it's absolutely outside the scope of the discovery and well beyond the time period.

Q Did the quorum have a meeting on January 22, 1975?

A Yes.

Is that the board date? I believe that's the -- is that the date of the board meeting?

Q I believe that's the date of the last meeting.

MR. SOUTHER: Yes.

A Yes, we did.

Q And how many weeks after that were you at

Mr. Burr's home?

A At the next board meeting.

Q Can you estimate how many weeks later?

A More than four, less than five.

Q Do you consider Mr. Burr a friend of yours?

MR. JOSEPH: As compared to a ~~fault~~ foe, you mean?

MR. TERSIGNI: He can compare it to anything you like.

A In the context of having many thousands of friends, I would say yes.

Q Did you focus in on Mr. Burr when you made your decision?

A No.

Q Do you consider all of the directors to be your friends?

MR. POLLACK: I object to the form of that question.

MR. SOUTHER: Object to that.

MR. TERSIGNI: You may answer.

MR. SOUTHER: Would you please, the witness seems to be having trouble trying to understand what you mean by friend.

MR. TERSIGNI: He answered as to Mr. Burr.

MR. SOUTHER: He said in the context of many thousands of friends.

MR. TERSIGNI: Yes.

MR. SOUTHER: Is that the answer you want?

MR. TERSIGNI: It's the answer he gave.

MR. JOSEPH: It's obvious he has a definition of friend that may not be your definition.

I think he defines it from his answer as an acquaintance, because few of us have thousands of friends.

BY MR. TERSIGNI:

Q My question was do you consider Mr. Burr a friend? Do you consider him a friend?

MR. SOUTHER: How do you define that?

MR. TERSIGNI: That's up to him.

A Yes, it's -- in the context of not enemy, a person who I have a business relationship with, I'd say yes.

Q You've known Mr. Burr since you became a director in 1971; is that right?

A Yes.

Q And you've attended board meetings fairly regularly at which he's also been present?

A Yes.

Q And have you had occasion to have lunch with Mr. Burr?

MR. SOUTHER: Separately or as part of a group?

Q Have you had occasion to have lunch --

MR. SOUTHER: I'd ask you to please respond to my question so the record will be clear.

MR. TERSIGNI: Either way.

A Maybe I can simplify it. I have never had an individual lunch or individual meeting with any of them. I have had every month, where we have a board meeting, we have lunch before it with all of the directors.

Q I understand that, Mr. Laun, but you've had a relationship with these gentlemen, or many of them, for the better part of three or four years; have you not?

A Yes.

Q I mean, you come to these meetings and you work together and you may serve on committees together, and you eat together from time to time.

Isn't all of that true?

MR. SOUTHER: That's not true.

And it's perfectly proper, but you're putting a connotation on it that the record will reflect will be confusing. The man has testified he comes regularly to monthly board meetings when they are held, and the directors as a group have lunch together. Beyond that he hasn't said anything.

BY MR. TERSIGNI:

Q You've worked with these gentlemen for three or more years; have you not?

A Yes.

Q You've served on committees together?

A Yes.

Q You have occasion to eat together from time to time?

A Yes.

Q And you feel you've gotten to know these men?

A Yes.

MR. TERSIGNI: Mr. Souther, I have no further questions at this time, but I do want to deliver to you the original transcripts of

Dr. Robichaud, Mrs. O'Connor and the second session of Dr. Kendall, and I believe you've already gotten all of the other original transcripts, and I would request that you have them executed, and returned as soon as possible.

MR. SOUTHER: Thank you.

MR. TERSIGNI: One final request that I would make on the record.

I call for production of any correspondence between Judge Fuld and any representative of the fund or of the advisor, if there be any, with respect to the subject covered by Judge Fuld's reports of December 5th and December 18, 1974.

I have no further questions.

BY MR. POLLACK:

Q Mr. Laun, I have a few questions for you, please.

Did you have any business relationship or professional relationship with Mr. Haire prior to the time that you became a director of Fundamental Investors.

A No.

Q Did you have any business relationship or professional relationship with Dr. Kammerer prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mrs. O'Connor prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Dr. Robichaud prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Dr. Burks prior to the time that you became a director of Fundamental Investors?

A Only if you would consider the meeting in which he interviewed me.

Q Other than that?

A None.

Q Did you have any business relationship or professional relationship with Mr. Burr prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Chalker prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Wade prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Monroney prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Hutchinson prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Martin prior to the time that you became a director of Fundamental

Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Hopkins prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you ever have any economic relations with Dr. Phillips in the sense that he paid you money or you paid him money for any services?

A No.

Q I have asked you a series of questions about business relationship and professional relationship with certain individuals prior to the time that you became a director of Fundamental Investors.

The individuals were Messrs. Haire, Kemmerer, O'Connor, Robichaud, Burks, Burr, Martin, Chalker, Wade, Monroney, Hutchinson and Phillips.

I now ask you whether you have had any business relationship or professional relationship with any of those persons since the time that you became a director of Fundamental Investors other than in your capacity as a director of Fundamental Investors.

A No.

Excuse me. I also -- I'm on several other boards of Anchor Group, and I have those relationships.

Q Solely as a director?

A As a director, yes, of these other funds.

Q Did you ever have any discussion with Mr. Haire about the deliberations of the disinterested quorum at any time between July 24, 1975 and January 6, 1975, other than at the meeting of December 18th?

A No.

Q Did Mr. Haire ever attempt to influence the deliberations of the disinterested quorum?

A No.

MR. TERSIGNI: Objection to the form of the question.

Q Did anyone from Anchor ever attempt to influence the deliberations of the disinterested quorum?

MR. TERSIGNI: Objection to the form of the question.

A No.

Q Did you feel under any pressure whatsoever from Mr. Haire or anyone else at Anchor with respect to your deliberations as a member of the disinterested quorum?

A No.

Q To your knowledge, did any other member of the disinterested quorum feel under any pressure from Mr. Haire or anyone else from Anchor with respect to the deliberations of the disinterested quorum?

A No.

MR. JOSEPH: Just one or two questions. Mr. Laun.

BY MR. JOSEPH:

Q As a member of the disinterested quorum, did you act in all of your deliberations in what you deemed to be the best interest of the fund?

A Yes, sir.

Q In your view, to the extent any of us can possibly know what influences us, in your view, did your relationship with Dr. Phillips or Mr. Burr or any other director prevent you from performing your duties to the fund and to the shareholders?

A Absolutely not.

MR. JOSEPH: Thank you.

MR. TERSIGNI: Mr. Souther?

MR. SOUTHER: No.

MR. TERSIGNI: I have a couple of additional questions.

BY MR. TERSIGNI:

Q I believe you said in substance that you had no discussions with Mr. Haire about the deliberations of the quorum between July 24, 1974 and January, I believe the date was 6, 1975; is that right?

A Correct.

Q Did you have any such discussions with Mr. Haire or anybody else other than the quorum, prior to July 24, '74, or after January 6, 1975?

A I don't recall any.

Q Are you sure?

A Yes, I'm sure.

Q As part of your deliberations, did you believe that if you voted to continue the lawsuit against Anchor, that that would have required the termination of Anchor's advisory contract?

MR. POLLACK: I object to the question as not within the scope of redirect examination. Nothing whatsoever was raised with respect to that issue on the cross-examination, either by me or by Mr. Joseph.

MR. TERSIGNI: Please answer it.

MR. SOUTHER: Do you want to read the

question back?

THE WITNESS: Read it again, because I thought I was being directed not to answer.

(The pending question was read by the reporter.)

A As I believe I testified, that was one of the possibilities. Not a certainty, but it was a possibility.

Q And that was also a possibility in the event that you voted to permit the shareholders in this case to continue with the litigation; is that correct?

A Yes.

Q And did you consider that that possibility would have been detrimental to the fund and its shareholders?

A Well, this was one of the long series of things that we felt backed up our reason for making the decision we did.

Q Did you believe that a termination of that advisory contract would have been detrimental to the fund?

A Yes.

Q Why did you believe that?

A Because of the fact that we felt that they were a competent advisory service, and that -- period.

Q Did you believe that such a termination would have created administrative problems?

A Yes.

Q And when Mr. Pollack asked you whether you felt under pressure, did you feel under pressure by reason of the possible termination of Anchor's advisory contract?

MR. SOUTHER: Object to the form of the question.

A No.

MR. SOUTHER: Excuse me; he said no.

MR. TERSIGNI: I have no further questions.

(Time noted: 1:15 p.m.)

Louis Frederick Laun

LOUIS FREDERICK LAUN

Subscribed and sworn to before me

this 28 day of July 1976.

Florence G. Dwyer

FLORENCE G. DWYER

NOTARY PUBLIC OF NEW JERSEY

My Commission Expires October 9, 1977

1138A

U.S. DISTRICT COURT
FILED
JAN 12 1977
11:19 AM
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HOWARD M. LASKER and IRVING GOLDBERG,

Plaintiffs,

- against -

HARRY G. BURKS, JR., EDWARD B. BURR, THOMAS F. CHALKER, JOHN R. HAIRE, HARVEY C. HOPKINS, S.P. HUTCHINSON, DONALD L. KEMMERER, A.S. MIKE MONRONEY, CHARLES F. PHILLIPS, JEPTHA WADE, ANCHOR CORP., and FUNDAMENTAL INVESTORS, INC.,

Defendants.

OPINION

73 Civ. 552 (HFW)

45516

APPEARANCES: (See last page)

HENRY F. WERKER, D. J.

This action, brought derivatively by two shareholders on behalf of Fundamental Investors, Inc. ("Fundamental" or the "Fund"), a registered investment company, seeks to recover damages resulting from the Fund's purchase of $20 million in 270-day notes issued by the now bankrupt Penn Central Transportation Company. The defendants are Anchor Corporation ("Anchor"), the registered investment adviser to the Fund, and several past and present members of the Fund's Board of Directors ("Board"). The defendants previously moved to dismiss this suit under Rule 12(b) of the Federal Rules of Civil Procedure because a voting quorum of disinterested directors found, in the exercise of its business judgment, that maintenance of the suit would not be in the best interests of the shareholders of the Fund. In a memorandum decision on that motion, 404 F. Supp. 1172, this court

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I

The facts surrounding this action have been described at length in my earlier memorandum decision; nevertheless, some repetition of that discussion will facilitate an understanding of the court's action upon the present motion by the defendants.

The complaint alleges, among other things, that Anchor breached its statutory, contractual and common law fiduciary duties by relying exclusively upon the representations of Goldman, Sachs & Co. (a seller of commercial paper), rather than independently investigating the quality and safety of the Penn Central 270-day notes purchased by the Fund. It is further alleged that the defendant directors knew or should have known of Anchor's failure to meet its responsibility; that they violated their common law duties as corporate fiduciaries by acquiescing in Anchor's omissions; that the financial condition of the Penn Central steadily worsened during the period from November 28, 1969 to June 21, 1970, the date that it filed for reorganization; and that during this period of decline all of the defendants failed to investigate and review the financial condition of the Penn Central and the quality and safety of its commercial paper. It is also alleged that during this period Anchor failed to recommend, and the defendant directors failed to attempt, sale of the Penn Central paper held by the Fund.

Prior to the institution of this action, the Fund and other plaintiffs brought suit against Goldman, Sachs seeking rescission of their purchases. See Welch Foods, Inc. v. Goldman, Sachs & Co., 398 F. Supp. 1393 (S.D.N.Y. 1974) (the "Welch" action). On the motion of all defendants to this action, Judge Gurfein, then a district court judge, granted a stay of further proceedings in this action pending resolution of the Fund's claims in Welch. Thereafter, on July 9, 1974 the Fund agreed to settle its claims against Goldman, Sachs. Under the terms of the settlement agreement, Goldman, Sachs was to take back the notes and the Fund was to receive $5,250,000 in cash and a 73.75 percent interest in any proceeds of the notes obtained during the course of the Penn Central reorganization proceeding.

With the claims of Fundamental in the Welch matter resolved, the Board once again faced the question of what to do in the instant action. Briefly, the Board determined that five of its members were disinterested (the "disinterested quorum" or "minority directors") and therefore able to determine the proper course of action for the Fund.[2] The disinterested quorum then retained the Honorable Stanley H. Fuld, former Chief Judge of the New York Court of Appeals, to review the circumstances surrounding the purchase and retention of the Penn Central notes and prepare an opinion for its consideration. In a memorandum to the disinterested quorum dated December 5, 1974, Judge Fuld concluded that neither Anchor nor the defendant directors of the Fund had violated the law "in connection with the acquisition or retention of the Penn Central commercial paper." Judge Fuld's memorandum discussed several positions that the disinterested quorum could take on behalf of the Fund, one of which was concluding that the suit lacked merit and moving to dismiss. The minority directors met with Judge Fuld at a special meeting of the disinterested quorum held on December 18, 1974 and requested that he submit a further memorandum before they took any action. The minority directors also questioned several of the defendants before deciding at a second special meeting of the disinterested quorum, held on January 6, 1975, to seek dismissal of the instant action.[3] An affidavit submitted by the chairman of the disinterested quorum as part of the earlier motion to dismiss recounts ten factors that the disinterested quorum considered in arriving at its decision. The relevant portion of that affidavit appears in my earlier decision, 404 F. Supp. at 1176-77.

II

On the defendants' initial motion to dismiss, this court considered and rejected the contention of the plaintiffs that the merits of their derivative claim should color the court's consideration of the business judgment "defense." The court also reviewed the claim of the plaintiffs that the strong public policy behind the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., and the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1, et seq., precluded application of the business judgment rule to the actions of mutual funds. The court observed that

> "absent a statutory exception, whether a cause of action is expressly authorized or is 'implied' the directors of a corporation should be given the chance to perform their duties in running the business of the corporation, including whether to prosecute a cause of action. 404 F. Supp. at 1180.

Both of these contentions have been reasserted in substantially unchanged form in the plaintiffs' papers in opposition to the renewed motion to dismiss. While a certain degree of tenacity is the mark of accomplished counsel, what the plaintiffs now seek is an opportunity to reargue the court's prior decision after the time to do so has passed. To accede to that request would require the court to reconsider arguments previously rejected without having been shown that there is a need to do so. Consequently, the court will only consider the question it did not reach before: whether the minority directors were disinterested and independent.

Since the parties have each submitted affidavits and excerpts from the extensive deposition testimony to assist in the disposition of the instant motion, the court must treat the motion as one for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. Rule 12(b), Fed. R. Civ. P.

II

The plaintiffs first contend that the structure of the mutual fund industry, which subjects mutual funds to extensive control by their investment advisers, precludes a finding of independence in this instance.[4] Specifically, they maintain that the large number of shareholders in the Fund coupled with the small size of each shareholder's interest, makes proxy contests impossible to wage and ensures that the Board will only contain directors amenable to the policies of the Fund's management.[5] The plaintiffs also suggest that the service of each minority director for compensation on the boards of other "Anchor" funds demonstrates their inability to act independently. In this vein, the plaintiffs maintain that business and personal relationships among the defendant and minority directors make it impossible to conclude that the disinterested quorum acted independently; that even if the minority directors acted in good faith, their loyalties must have been divided.

Plaintiffs have not adduced any factual support for their conclusion that the members of the disinterested quorum acted other than independently.

Although each of the minority directors knew someone on the Board at the time that he or she was nominated, the relationships which existed between the minority directors and the defendant directors were de minimis, even as they are stated by the plaintiffs, and do not suggest that the business judgment rule should not be applied.

There is also no reason to conclude that the business judgment rule is inapplicable merely because each minority director receives remuneration for service on the boards of other "Anchor" funds. Most corporate directors receive some compensation for their services, but absent a showing of improper motive they have always been permitted to apply their business judgment to decisions involving derivative suits brought against the corporations they serve. See, e.g., Warshaw v. Calhoun, 43 Del. Ch. 148, 221 A.2d 487 (Sup. Ct. 1966). I am not persuaded that there is any meaningful distinction between remuneration by one corporation rather than several corporations similar in structure. This is not, after all, an instance where it is alleged that a minority director received payments from the investment adviser or other persons whose interests conflict with those of the Fund.

The plaintiffs' contention that a minority director of a mutual fund can never act independently given the relationship between mutual funds and their advisers parallels, to some extent, their previously rejected argument that the business judgment rule should not apply to mutual funds registered under the Investment Company Act of 1940. In making this claim, plaintiffs apparently rely upon Fogel v. Chestnutt, 533 F.2d 731 (2d Cir. 1975), cert. denied, 45 U.S.L.W. 3250 (U.S. Oct. 5, 1976), but that decision is inapposite. In the Fogel case, two mutual fund stockholders brought a derivative suit on behalf of a mutual fund against several affiliated fund directors and the adviser to the fund. The plaintiffs sought to recapture a portion of the brokerage commissions paid on fund transactions on the theory that the affiliated directors had "intentionally misled and misinformed the [f]und's unaffiliated directors by telling them that such recapture was not available to the [f]und." Id. at 737.

Writing for the Fogel panel, Judge Friendly observed that:

> "Congress had mandated independent directors in order 'to supply an independent check on management and to provide a means for the representation of shareholder interests in investment company affairs.' [citation omitted]. The minimum requirement to enable the [f]und's independent directors to discharge these duties with respect to recapture was a careful investigation of the possibilities performed with an eye eager to discern them rather than shut against them, and, if these possibilities were found to be real, a weighing of their legal difficulties and their economic pros and cons. It would have been still better to have the investigation of recapture methods and their legal consequences performed by disinterested counsel furnished to the independent directors."

Id. at 749-50.

Significantly, Judge Friendly went on to observe that:

> "If this had been done and the independent directors had concluded that, because of legal doubts, business considerations or both, the [f]und should make no effort at recapture, we would have a different case."

Id. at 750.

In the instant action, the minority directors were furnished with disinterested counsel who analyzed the legal consequences of each alternative available to the disinterested quorum. Moreover, the affidavit of the quorum chairman and the minutes of the special meetings indicate that the minority directors acted only after they had fully considered the options available to them. Clearly, then, under Fogel it was proper for them to determine what the Fund's posture would be.

IV

The plaintiffs next contend that the lack of true independence and disinterestedness on the part of the minority directors is apparent from the manner in which they decided to seek dismissal of the instant action. In support of this claim, plaintiffs point to the actions of Roger T. Wickers, an Anchor vice-president who formerly served as the secretary to the Fund, and Eugene P. Souther, who was retained as special counsel to the Fund for the purposes of this litigation, as well as to the circumstances surrounding the meetings of the minority directors.

At the direction of defendant Haire, Wickers explored the possibility of retaining special counsel for the disinterested quorum. After contacting several distinguished attorneys, Wickers reported that Judge Fuld would be available to serve the minority directors and, at a Board meeting held on July 24, 1974, it was Wickers who proposed that a disinterested quorum act for the Fund in the instant action. Wickers also coordinated the arrangements for Judge Fuld's investigation for the minority directors, who were residents of several different states.

The plaintiffs maintain that "the inappropriateness of Wickers role as intermediary is manifest," but I disagree. The plaintiffs have not set forth any facts in support of their suggestion that Wickers improperly influenced the deliberations of the disinterested quorum. Instead they have engaged in totally unsubstantiated supposition. For example, plaintiffs contend that Wickers retained Judge Fuld, but the sworn affidavit of Wickers and the deposition of at least one minority director establish that Judge Fuld was retained by the minority directors to act upon instructions communicated to him at the direction of the disinterested quorum.[6] In the absence of some factual support for the plaintiffs' allegations, the court cannot conclude that it was improper for Wickers to coordinate the administrative details of Judge Fuld's inquiry or that Wickers' actions reduced the independence of the minority directors.

It is the court's opinion that the role of Souther was equally innocent. The plaintiffs advance two reasons why it was inappropriate for him to participate as he did in the deliberations of the disinterested quorum. First, they note that he was an "interested person" within the meaning of § 2 of the Investment Company Act, 15 U.S.C. § 2(a)(19)(iv)[7] because his law firm had acted as legal counsel to the Fund during the last two fiscal years. They question whether the minority directors could arrive at a disinterested decision when they were advised by an attorney who was "interested." Second, the plaintiffs contend that it was improper for his firm to counsel parties with divergent interests, namely the Fund and the disinterested quorum.

All attorneys providing legal counsel to mutual funds become, by definition, "interested persons" for some period of time. Under § 10 of the Investment Company Act, 15 U.S.C. § 80a-10, only 60 percent of the members of the board of a registered company may be interested persons. Designating Souther as an interested person, therefore, only serves to limit his participation on the Board as a director. It does not mean that the minority directors were interested in the suit, that their deliberations were somehow subject to improper influence or that they lacked the necessary degree of independence.

Plaintiffs nevertheless suggest that in accordance with Judge Frankel's recent decision in Papilsky v. Berndt, CCH Fed. Sec. L. Rep. para. 95,027 (S.D.N.Y. 1976), it was improper for Souther to advise both the Fund and the minority directors. However, in Papilsky the law firm advising the fund also served as the investment adviser's counsel, and, as Judge Frankel noted, there was no "suggestion to the Board that, because of the possible conflict of interest, the independent directors should seek disinterested counsel." Id. at 90,133. In the instant action, independent legal advice for the minority directors was not only recommended, it was also obtained. Moreover, there was no conflict of interest on the part of the Souther or his law firm: they were retained to represent the Fund in the instant action and it was the disinterested quorum, acting for the Fund, which gave them their instructions as to how to proceed.

The plaintiffs also contend that the presence of several defendants during the initial presentations of Judge Fuld and Souther at the first special meeting of the disinterested quorum demonstrates the minority directors' lack of independence. But the minutes of that meeting and the deposition testimony show that the minority directors invited those defendants to join the meeting so that they could answer questions raised by the minority directors. The minutes of the meeting also indicate that all of the defendants and counsel were excused before the disinterested quorum determined in executive session that it wished to review the pertinent documents and formulate further questions to be answered before reaching any decision.

In this context plaintiffs point to the allegedly misleading nature of statements made to the minority directors by defendant Haire. The minutes of the first special meeting of the disinterested quorum state that Haire "questioned the ability of Anchor to attract and retain the highly qualified personnel they want and need if [the instant action] were being pursued with the acquiescence, if not under the control, of the Fund." The plaintiffs consider this to be in sharp disagreement with Haire's testimony at his disposition that he "never at any time had any doubt that [Anchor] could continue to effectively serve the [F]und if . . . requested to continue or permitted to continue by the board or the shareholders." Apparently to underscore the materiality of Haire's discouraging words to the minority directors, plaintiffs note the contents of an affidavit by the chairman of the disinterested quorum. In that affidavit, the quorum chairman states that in reaching their decision the directors considered that:

> "(c) If the action were to proceed against Anchor with the acquiescence or under the control of Fundamental, the adversary relationship that would be created between Fundamental and Anchor and the attendant serious distraction of Anchor's personnel from their efforts on behalf of the shareholders of Fundamental would leave us no practical alternative but to remove Anchor as investment adviser and to seek to retain a new investment adviser; this would necessarily result in delay, uncertainty and an inevitable lapse in the management of Fundamental's affairs to the serious detriment of its shareholders. . ."

The court is of the opinion that Haire's statements are neither inconsistent nor misleading. His assertions only indicate that he believed it would have been difficult, but not impossible, for Anchor to have continued its service to the Fund faced with this lawsuit. The affidavit of the disinterested quorum chairman shows only that the minority directors reached a different conclusion: that prosecution of the suit "would necessarily cause the Fund to seek to obtain a different investment adviser immediately." Even if the minority directors erred in this determination, as I have noted in my previous decision, the court cannot upset their reasoned judgment without some showing that the independence of the disinterested quorum was impermissibly curtailed. The plaintiffs have not presented any such evidence.

V

Finally, the plaintiffs contend that under Perlman v. Feldman, 219 F.2d 173, 178 (2d Cir.), cert. denied, 349 U.S. 952 (1955), and Pepper v. Litton, 308 U.S. 295, 306 (1939), the defendant directors bear the burden of proving by clear and convincing evidence that they did not breach their fiduciary responsibilities to the corporation and its stockholders. The defendants argue that the plaintiff must shoulder the evidentiary burden because it is the exercise of business judgment by corporate directors which is challenged. Belles v. Thal, 373 F. Supp. 120, 124 (E.D. Pa. 1974), aff'd, 510 F.2d 969 (3d Cir. 1975); Marco v. Bank of New York, 272 F. Supp. 636, 639 (S.D.N.Y. 1967), aff'd, 394 F.2d 628 (2d Cir. 1968); Warshaw v. Calhoun, supra.

The Perlman and Pepper cases relied upon by the plaintiffs both involve self-dealing by corporate fiduciaries and are inapplicable here. As I noted in my earlier decision in this matter, the plaintiffs "have not argued that the minority directors have acted fraudulently or corruptly." 404 F. Supp. at 1180. Moreover, the question before the court is not whether the defendants breached their fiduciary obligations to the corporation, but whether suit can proceed against them at all given the decision of the nondefendant minority directors to seek dismissal of this action.

It is therefore incumbent upon the plaintiffs to establish that the minority directors actions lacked independence. Marco v. Bank of New York, supra. The unsupported contentions of the plaintiffs clearly fail to meet this burden and, accordingly, it is the opinion of this court that the defendants, both corporate and individual, cannot be required to proceed to a trial. I hasten to add, however, that even if the defendants are required as a matter of law to negate any suggestion of unfairness arising from the decision to abandon the derivative claims raised in this suit they have done so. The exhibits presented to the court on both the earlier motion to dismiss and the instant motion show that the minority directors carefully evaluated the opinions tendered by both counsel involved in this action, that they considered the merits of the derivative claims asserted in the complaint, that they discusssed the facts and circumstances surrounding the purchase and retention of the notes with several of the defendant directors and that they communicated extensively among themselves before reaching a decision to seek dismissal of this suit.

To conclude that the disinterested quorum acted in response to pressure and without justification to immunize Anchor and the defendant directors from possible liability would require this court to presume that bias exists based upon circumstances which seem entirely innocent. For example, as has been noted, the plaintiffs suggest that a finding of improper influence must follow from the fact that the minority directors each knew someone on the Board when they were first selected for nomination or election to the Board. But the existence of casual relationships among the directors, without more, cannot be taken as an indication that the minority directors were unable to reach an independent business decision. Similarly, because the Investment Company Act terms an attorney whose advice is sought to be an "interested person," plaintiffs seek to suggest that the minority directors had an interest in the contested transaction which went beyond a generalized concern for the security of the Fund.[8] But here again it was obviously reasonable for the minority directors to consult with interested persons, rather than reaching a decision without speaking to either the directors involved in the transaction or counsel.

The court of appeals for this circuit has recently cautioned that summary judgment may not be granted unless, drawing all *reasonable* inferences in favor of the nonmovant, no material factual issue is shown. *Heyman* v. *Commerce and Industry Insurance Co.*, 524 F.2d 1317 (2d Cir. 1975). However, the party opposing the motion must adduce something beyond conclusory allegations. *Donnelly* v. *Guion*, 467 F.2d 290 (2d Cir. 1972). Here, there has been no showing by the plaintiffs of facts which, if proven, would prohibit the defendants from hiding behind the business judgment cloak. Accordingly, the defendants are granted summary judgment.

SO ORDERED.

DATED: New York, New York

January 7, 1977

Henry F. Werker

U. S. D. J.

LASKER v. BURKS, 73 Civ. 552 (HFW)

NOTES

1. Under the rule,

> "'. . . Questions of policy of management, expediency of contracts or action, adequacy of consideration, lawful appropriation of corporate funds to advance corporate interests, are left solely to their honest and unselfish decision, for their powers therein are without limitation and free from restraint, and the exercise of them for the common and general interests of the corporation may not be questioned, although the results show that what they did was unwise or inexpedient.' Politz v. Wabash R. Co., 207 N.Y. 113, 124, 100 N.E. 721, 724. Indeed, although the concept of 'responsibility' is firmly fixed in the law, it is only in a most unusual and extraordinary case that directors are held liable for negligence in the absence of fraud, or improper motive, or personal interest." Bayer v. Beran, 49 N.Y.S.2d 2, 6 (Sup. Ct. 1944).

2. Under Article Eight of the Certificate of Incorporation of Fundamental, a quorum of the Board may not be less than one-third of the total number of directors. Since the full Board consisted of ten members, there was no problem here.

3. As was noted in my earlier decision in this matter, although one of the five minority directors voted by proxy, even without her vote, the presence of four directors at the meeting constituted a quorum.

4. In this regard, plaintiffs note Chief Judge Kaufman's recent statement that:

> "The relationship between investment advisers and mutual funds is fraught with potential conflicts of interest. The typical fund ordinarily is only a shell, organized and controlled by a separately owned investment company adviser, which selects its portfolio and administers its daily business. Compensation for these services is determined under an advisory contract, the terms of which are all too often dictated to unwary or negligent fund directors and fund shareholders by the investment adviser." Galfand v. Chestnutt Corp., Civ. No. 76-7156 (S.D.N.Y. Nov. 4, 1976).

5. At about the time that the minority directors determined to seek the dismissal of this action, there were approximately 141,000 shareholders in the Fund. No shareholder had a beneficial interest greater than one percent.

6. Even if Wickers did retain Judge Fuld for the minority directors, I see nothing improper in that. In fact, in Fogel, supra, Judge Friendly suggested that it was desirable for disinterested counsel to be "furnished" to the independent directors.

7. Under the statute:

> "(19) 'Interested person' of another person means --
>
> (A) when used with respect to an investment company --
>
> . . .
>
> (iv) any person or partner or employee of any person who at any time since the beginning of the last two fiscal years of such company has acted as legal counsel for such company. . ."

8. In a similar effort to brand a minority director as interested, plaintiffs point to the following testimony by director Stephens:

> "I remember commenting [at the July 24, 1974 board meeting] on what constituted a disinterested director because in my opinion no director could be disinterested, but I was told that was the proper term.

Later Stephens explained that he didn't like the term "disinterested" since he certainly was not "uninterested."

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1155A Werker J.

U.S. DISTRICT COURT
FILED
JAN 17 1977
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

HOWARD M. LASKER and IRVING GOLDBERG
Plaintiffs

-against-

HARRY G. BURKS, JR., EDWARD B. BURR, THOMAS F. CHALKER, JOHN R. HAIRE, HARVEY C. HOPKINS, S.P. HUTCHINSON, DONALD L. KEMMERER, A.S. MIKE MONRONEY, CHARLES F. PHILLIPS, JEPTHA WADE, ANCHOR CORP., and FUNDAMENTAL INVESTORS, INC.
Defendants

- x

73 Civil 552 (HFW)

JUDGMENT

Defendants having renewed their motion to dismiss, pursuant to Rule 12(b), of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Henry F. Werker, United States District Judge, and the Court thereafter on January 12, 1977, having handed down its opinion granting the said motion, it is,

ORDERED, ADJUDGED and DECREED: That defendants HARRY G. BURKS, JR., EDWARD B. BURR, THOMAS F. CHALKER, JOHN R. HAIRE, HARVEY C. HOPKINS, S.P. HUTCHINSON, DONALD L. KEMMEREF, A.S. MIKE MONRONEY, CHARLES F. PHILLIPS, JEPTHA WADE, ANCHOR CORP., and FUNDAMENTAL INVESTORS, INC., have judgment against plaintiffs HOWARD M. LASKER and IRVING GOLDBERG dismissing the complaint.

Dated: New York, NY.
January 17, 1977

Raymond F. Burghardt
Clerk

MICROFILM
JAN 18 [illegible]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---X

HOWARD M. LASKER and IRVING GOLDBERG, :

Plaintiffs, :

-against- :

HARRY G. BURKS, JR., EDWARD B. BURR, THOMAS F. CHALKER, JOHN R. HAIRE, HARVEY C. HOPKINS, S.P. HUTCHISON, DONALD L. KEMMERER, A.S. MIKE MONRONEY, CHARLES F. PHILLIPS, JEPTHA H. WADE, ANCHOR CORPORATION and FUNDAMENTAL INVESTORS, INC., :

Defendants. :

---X

73 Civ. 552
(HFW)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Howard M. Lasker and Irving Goldberg, the plaintiffs above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the final judgment dismissing this action entered on January 17, 1977 and from all prior rulings and orders that produced said final judgment, including, but not limited to, the order entered on September 26, 1975 denying, without prejudice to renew, defendants' motion to dismiss this action, the order entered on January 7, 1976 denying plaintiffs' motion for reargument, and the order entered on January 12, 1977 granting summary judgment for the defendants.

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Dated: New York, N.Y.
January 27, 1977

Yours, etc.

ARANOW, BRODSKY, BOHLINGER,
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